

It is not my wish to draw any conclusions from these experiments, and much left to determine how the electrical condition may have, as a principle, to account for many remarkable appearances in nature. I relate the experiments I have been witness to, for fear of inattention to the common thread paper, and I confess the result of them only as a further proof of the insulating degree to which power in electricity, which had not before been observed to, may be carried to even the highest resistance, those of white and of black silk.



~~63/5.a.7~~

712.a.69

THE
MERCHANT,
TRADESMAN,
AND
FARMER'S
DIRECTOR:

CONTAINING,
The RULES prescribed by all the Acts of
Parliament, from the ninth of WILLIAM
the third, to the nineteenth Year of his
present MAJESTY's Reign, for drawing,
endorfing, accepting, noting, and protesting
foreign and inland Bills of Exchange.

TO WHICH IS ADDED,
The MANNER of drawing, witnessing,
and endorfing Notes, under the Value of
five Pounds, as per Act of the seventeenth
of GEORGE the third. Also, an ACT,
passed the last Session of Parliament, to
prevent Forgeries. With many particular
CASES, determined by Lord *Mansfield*,
and others.

BY GEORGE CROOKE,
Officer of the Customs, GAINSBROUGH.

LINCOLN:
Printed (for the AUTHOR) by M. ROSE.



to remove it there.

is M. A. N. V. R. of division, withstanding
and ending in 1902, under the Value of
the Pound, as per A. A. of the twentieth
of October, 1902. Also, an A. A. of
the 1st Section of the 1st Division, to
be given to the 1st Division, with the 1st
CASE 2, determined by Lord Mansfield,
and others.

BY GEORGE CROOK.

LINCOLN

Printed (George Arthur) by M. Rose.

INTRODUCTION.

THERE is scarce any person, either gentleman, tradesman, or farmer, but what must, at some times, have occasion for bills of exchange; and those who have the least acquaintance with them, must certainly be most liable to suffer, either by forgeries, or the want of knowing how to proceed when a bill is either improperly drawn, or not duly and legally negotiated. It is presumed, that this small treatise will abound with the fullest information during the process of a bill; and point out the measures necessary to be taken where a fraud is even suspected. And as the most judicious, and circumspect, may err, for want of memory; and those but little concerned in draughts, be deceived, for want of knowledge; the trifling expence of the purchase, 'tis hoped, will not be thought, in any comparison, adequate to the value of so concise, explicit, and useful a work.

Those gentlemen who are so obliging as to promote the success of this undertaking, by becoming purchasers, may depend upon its being executed in the completest manner, and their favor gratefully acknowledged,

By their most obedient servant,

The Editor.

Gainfbrough,
October 7,
1778.

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THE
MERCHANT,
TRADESMAN,
AND
FARMER'S
DIRECTOR.

CHAP. I.

On BILLS of EXCHANGE in general.

EXCHANGE, according to the accounts handed down to us by the ancients, has been in use two thousand years. Money was first made of gold and silver; and, in order to avoid the difficulty, and hazard, of carrying various merchandises, in barter, from one country to
B another,

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another, in process of time, mints, for coining, were erected by several nations; and, at length, the method of paying, by *bills of exchange*, was contrived; not only to avoid the danger of sending specie from one country to another, but to prevent the inconvenience of carrying it.

Therefore the several trading kingdoms and nations of the world, by a sovereign power and authority, have established various species of money for the greater convenience and ease of carrying on traffick; and have ordained a certain rate of exchange for the permutation of the various coins of several countries without sending it abroad, by giving value for value, allowing the negociators a certain consideration for accommodating the merchants.

And as *bills of exchange* are established by the laws and customs of different countries, for the benefit of trade, so are those rules and customs allowed to prescribe their form and several properties, as to their creating engagements on the parties concerned in them.

A *bill of exchange* is an order for money to be received in one place, or country, for the value paid in another; in which case there are generally four persons concerned, (two at the

the place where it is drawn, and two at the place of payment.) *viz.* The *drawer*, or he who gives the order to make payment; the *endorser*, or he to whose order the bill is made payable, and he remits it to his correspondent, who is the *endorsee*, or third person; the *acceptant* is the fourth.

Sometimes it happens that there are only three persons concerned, one and the same person being endorser and possessor; for instance, a person going from Gainsbrough to London, and not chusing to run the risk, or have the burden, of a sum of money, to answer his purposes there, purchases a bill with his money, which he carries with him for acceptance and payment.

The following rules ought carefully to be observed in drawing inland bills.

1st, Must be set down, at the top of the bill, the place and date.

2d, Whether at sight, or at a certain number of days or weeks, or after sight or date; also, the name and surname of the party the bill is made payable to, distinctly; but, if co-partners, *Messrs. A. & B. Paywell*, or order, or bearer, as agreed upon.

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3d, In all bills that are made payable to order, you must be careful properly to insert whether to *his, her, or their* order.

4th, It must be observed, that the sum for which the bill is drawn, must be wrote in words at length, distinctly.

5th, It is also absolutely necessary that you conclude --- *value received, as per advice*; or, *without advice*, (as circumstances may require)

From sir, or gentlemen,

Your most obedient servant,

G. C.

6th, If the value of a bill is not mentioned to have been received, you cannot *note* and *protest* it, if not paid.

7th, It is customary to direct the bill over against the subscription, leaving a space for acceptance, there describing the name, character, and place of abode of the party, or parties, drawn upon.

Lastly, A bill of exchange is within the *statute of limitation*, and must be sued for within six years after it becomes payable.

CHAP. II.

*The Manner of drawing**Foreign BILLS of EXCHANGE.*

1st, **Y**OU must mention the time and place; then proceed with the same regularity as is directed for the drawing inland bills; but, as the circumstances vary greatly, you must observe the following directions.

2d, *Foreign bills of exchange* are drawn at single, double, or treble usance, which differs in many countries; and, in Germany, it is common to draw payable at certain great fairs, viz. Frankfort, Leipfick, &c.

3d, It must be observed, in drawing a bill, to specify the quality of a bill; that is to say, if it be first, second, or third. The prudent have wisely established that precaution of taking two (and in some cases more) *bills of exchange* for the same sum of money; in case the first should miscarry, or be lost, the second, or third, may supply its place. And, that the drawer may not be subject to any inconvenience by the multiplicity of bills for the same sum of money, they are distinguished

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guished by the quality of first, second, and third bill; either of these being paid, the other remains void, and of no effect.

4th, There ought to be great care taken to express the sort, or specie, of money; that is, whether in bank, or current, money; for though, in England, there is no such difference in the money, yet, in Holland, the difference is great; for their bank money, which is usually the money the Dutch pay their bills in, is four or five, and sometimes more, per cent better than their other money, or of their usual current money of the place.

5th, It must be observed, that the price, of the *exchange*, be expressed in words, at length; as, for instance, suppose it were between London and Paris, it must be named how many pence, &c. sterling, per *ecu*, or crown of sixty sols; or, if between England and Holland, how many schillings and grotes, Dutch money, must be given for twenty shillings sterling.

6th, You must take notice to spell the name of the person, drawn payable to, exactly in the manner he does himself, for no man of business writes his name different ways to any deed, or writing, of consequence, it being very frequent, in case of any law suit, &c.
when

when witnesses are wanted to prove a deed, to compare the writing, in question, with some others of the same parties, whose deed it is alledged to be; and, according to the likeness of the hand's writing, the matter is determined.

Different Forms of foreign BILLS.

London, May 19, 1778. For 196l. sterling, exchange 34s. 5d. per £.

At three days sight pay this, my only *bill of exchange*, to Mr. A. B. or order, the sum of one hundred ninety-six pounds, sterling, in *bank money*, at thirty-four schillings and five grotes per pound, sterling. Value received of Mr. C. D. as per advice,

From your humble servant,

To Mr. G. H.

E. F.

Merchant, Amsterdam.

London, May 17, 1778. Crowns 900 exchange at 34d. per crown.

At sight pay this, my first of exchange, to Mr. A. B. or order, the sum of nine hundred crowns, at fixty sols *tournois* per crown. Value received at thirty-four pence, sterling, per crown, as per advice,

From your humble servant,

To Mr. E. F.

C. D.

Banker, in Paris.

London,

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London, May 17, 1778. Crowns 900 at
34d. per crown.

At sight pay this, my second bill of exchange, (my first not being paid) the sum of nine hundred crowns, at sixty sols tournois per crown. Value received, at thirty-four pence, sterling, per crown, as per advice,

From your humble servant,
C. D.

To Mr. E. F.
Banker, in Paris.

The third bill always agrees, in every thing, with the first and second, only with this addition, *pay this my third bill, (my first and second not being paid).*

Exchange 200l. sterling, at 33s. per £. sterling.
London, July 7, 1778.

At ten days sight pay this, our first of exchange, to the order of Messrs. A. B. the sum of two hundred pounds, sterling, in bank money; value, in two bills of exchange, received of them, at thirty-three schillings per £. sterling, as per advice,

From your humble servants,
C. and D.

To Messrs. E. F.
Merchants, in Amsterdam.

In the last example, foregoing, may be observed, that bills drawn at so many days sight, weeks, or months, are otherwise understood in the same terms. As the said bill is supposed to be drawn by C. and D. partners, merchants, in London, to the order of A. and B. two other partners, merchants, at the same place, upon E. and F. supposed to be merchants, partners, in Amsterdam; in which case, of partnership, it is usual to sign with their surnames only, except when a partner is absent; and then, in such case, the partner present signs both his name and surname, for himself and company; otherwise, the bill, bond, or obligation, can be no ways binding, or of any force, against the party, or parties, that have not signed.

Particular care should be taken in drawing of bills, either foreign or domestic, not to omit the word '*order*,' if so intended to be drawn; for, by such an omission, the bill cannot, with propriety, be endorsed.

No person can legally draw a bill for another, in his absence, unless properly authorized by a letter of attorney, or otherwise; notwithstanding which, it is commonly practised by clerks, &c.

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CHAP. III.

Of the ENDORSER,

*And what is to be done in case any of the
Parties concerned fail.*

1st, **W**HEN a remitter fails, before he pays the value, and the bill is drawn in by him, or endorsed, and sent away, and is accepted, the acceptor is obliged to pay the same at the time when due, although the drawer *has not* received the value.

2d, If an acceptor fails, or refuses to pay, or becomes insolvent, after he has *accepted* a bill, although the drawer has not received the value, the drawer is obliged to pay the bill, with re-exchange, provision, and charges to the possessor.

3d, When a remitter fails, before he pays the value, and the acceptant gets notice, before he accepts, and therefore refuses to accept, so that the bill returns with protest, yet the drawer is obliged to pay the re-exchange, if the possessor can prove that he negotiated

negociated the said bill, and paid the value for it; but if the bill be made directly payable, to any person, and the remitter sends him the bill, in payment of what he was indebted to the person it was sent to, then it is a great question whether the drawer is obliged or not, if he hath received no value, nor the possessor, any otherwise, hath made the same good.

4th, And though the drawer, in such a case, must pay more than the remitter is indebted to him, for the value, *viz.* the re-exchange and charges, yet the said remitter is debtor for no more than the *bare* value, nor can any more be demanded of him.

5th, A remitter ought to be very cautious of receiving bills that are not drawn or accepted by a known *sufficient* man, whose hand-writing he knows, if the endorser, or the drawer-in of the value, be an unknown man.

6th, When a drawer, for another's account, receives not the value, then the loss comes charged on the account of him for whose account it was drawn, unless the drawer stood surety, seeing *his* being surety hath respect to the remittances, and the whole negociation; or unless the drawer gave

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the remitter some time for the payment of the value, and did not advise his principal thereof; or had neglected to demand the money in due time; or if, at the time of drawing, the remitter was known to be an insolvent, and declining man; in any of these cases, whether the drawer had any profit or not, the loss will fall upon his own account, because he credited the remitter.

7th, When a drawer fails, before the value be received, if the remitter hath the bills in his own hands, he may restore them to the creditors, or trustees, of the drawer's effects; and if either of them shall refuse to take the same, and think that he is obliged to perform his contract, and to pay the value, he must demand acceptance and payment of the bills, the remitter being obliged to endeavour the same; but it is with this proviso, that those creditors, or trustees, who urge him thereto, shall give him sufficient security for the re-exchange and charges, in case he negotiate the same, and it should be returned with protest: and this they must do before they can oblige the remitter to pay the value of the bill to any of them.

8th, If the remitter hath conditioned, for any time, for the payment of the value;

or

or if he cannot pay the value in due time, (as in Amsterdam the bank being shut up) but in the mean time at the request of the drawer; he accepts of an assignment payable to a third person, at the expiration of the time agreed upon, or after the opening of the bank; whether this acceptance be verbal or written, the remitter is thereby obliged to pay the value to the said third person, at the due time, though the drawer, in the interim, should fail.

9th, If the remitter, or possessor, had been negligent in demanding acceptance, and the drawer, in the mean time fails, but the acceptant knows nothing thereof, before acceptance is demanded, and he accepts the same, this acceptance obligeth him to the payment, though procured after the drawer has failed, as well as in respect of his being the acceptant himself, or any other, for whose account the bill was drawn.

10th, When a bill is drawn, and endorsed by several persons, before the same is accepted, and afterwards the acceptance should be refused on account of the drawer's failing; in such case, the loss falls upon the first endorser, (though any one of them may be sued) because he should have had the acceptance in time, and must blame himself for
having

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having no better security than a broken drawer to rely on for the recovery of *his* monies.

11th, When an acceptant hears that the drawer has failed, before acceptance is demanded, he need not accept any of the said drawer's bills (although he may, through ignorance of the drawer's circumstances, have promised to honour such bills) without having sufficient security to be discharged from all and every one that shall make any pretence or demand thereof, whether it be the drawer, his creditors, trustees, or his principal, for whose account it is drawn, &c.

12th, Nor may the acceptant accept any bills from the insolvent drawer, though the bill bear date before his failure, and the letter of advice the same date, whether it comes by the ordinary post or not; for there is great reason for suspicion that there is some underhand fraudulent dealings, and that the bill and the letter are truly antedated.

13th. When an acceptor fails, before the day of payment, if the bill be made payable to order, as soon as the possessor can get protest to be made, he must send the same to the first remitter, and must keep the bill till it falls due, that in case the drawer orders
any

any other to honour his bill in time, the possessor may be ready to receive the value.

14th, If any other offer to accept and honour a bill, whose first acceptor has failed, in favour of the drawer, or any other endorser, the possessor is not obliged to accept of such an offer, if he thinks the presenter is not a sufficient man; but if he will give security the possessor cannot refuse such an offer.

15th, It is not safe to accept a bill, whose first acceptor has failed, without a protest for non-payment, declaring the bad circumstances of the acceptor, and such an acceptant, in honour, must immediately send the said protest, together with the notary's attestation of his accepting the same in honour of the drawer, or of him for whose account he has accepted the same.

16th, Though it be certainly known, and the drawer himself does confess, that the acceptor of his bill has failed, yet he is not obliged to give any caution, security, or satisfaction, to the remitter till the protest be produced; but if the remitter, or possessor, have the bills returned without the protest, or the protest without the bills, or both the protest and the bills, and shews them to the drawer,
then

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then he is obliged instantly to give satisfaction, or security, for re-exchange and charges.

17th, No drawer ought to make restitution of the value he received, or of the re-exchange and charges, upon producing of the protest for the acceptor's insolvency; but upon the producing thereof, being required thereto, let him give security for the payment thereof at the place where it is payable, if there be time enough, or for the re-exchange when the accepted bill (by the insolvent acceptor) be produced; which bill, if it be not produced, he need not restore, nor repay any thing, but, upon sufficient security, to deliver the bill, and to discharge him from all future demands, and to make restitution thereof with interest, in case the said bill be paid to any person, *supra* protest; but if there is not time enough to order the payment of the bill at the place where it was payable, then let the drawer give security to pay it to the remitter in the place where it was drawn, when the time of the bill shall be expired.

18th, A drawer, or endorser, is obliged to the possessor, of a bill protested, for an acceptor's insolvency, as much as if the bill was protested for non-acceptance.

19th,

19th, When a bill is made payable, or endorsed payable to any possessor, who, unknown to the acceptor, is become insolvent before the day of payment, if he makes payment of the same, not knowing of the possessor's failing, such payment is good and valid; but if he pay to any other, upon the said possessor's order, and knows of the possessor's failing, he runs a great hazard of paying twice.

20th, When a possessor of a bill fails, and the acceptant can demonstrate and prove that the bill was remitted for the possessor's account, or upon the account of what the remitter, or any for whose account it was remitted, was indebted to the possessor, and therefore he only is the true owner and principal of the bill, then the acceptor may pay it to him, and he must credit the person for whose account it is for the value; but if the bill be for the account of a third person, or for the drawer's account, and neither of them have received a valuable consideration from the possessor of it, in such case, it ought not to be paid to him, in regard the failed possessor is not the true owner of the bill, but is only the true *demandor of satisfaction*, and the acceptor should be obliged, at the day, to pay the same to the next order of the remitter, or to the true owner of the bill for whose account it is.

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21st. When the possessor of a bill, that has failed, to defraud his creditors or others, conceals a bill, and they afterward discover that he hath such a remittance in his hands, or such a draught is, or was in his hands, then the acceptant is obliged to declare whether he hath accepted such a draught; to which, if he answers in the affirmative, the creditors, or any other concerned, may forbid the acceptor's paying it, without their or his knowledge or consent; and if any person appears at the day to demand the money, the party that appears is obliged to declare and prove that he is the true possessor of the bill; and, if nobody appears to demand payment, then the acceptor is obliged to pay the sum to the creditors, or assignees, of the party that has failed, they giving security that the acceptor shall be no ways prejudiced thereby; or, if he refuse to do it upon their security, he may lodge it in the hands of a proper magistrate, for the account of the true owners thereof; and, if the acceptor refuses this, the creditors, or their assignees, may unanimously protest against him for non-payment, and send the same to the remitter to procure satisfaction from the drawer; and, if he makes no satisfaction, they may compel the acceptor thereto.

22d, When a bill is made to the order of a person that fails, before the bill is come to hand, if he receives it, and endorses it, making it payable to any other person that demands acceptance thereof, the latter being ignorant of the first possessor's failing; in such a case, the acceptor (if he gets knowledge of the first possessor's failing, and that he endorsed the same after he failed) need not pay the value thereof to his order, because the insolvent possessor, after he has failed, has no power or authority over a bill, nor can he legally endorse the same; and therefore the acceptor ought to pay the same to his creditors, provided they will give him such security as shall indemnify him from the same, which, if they refuse to do, let him suffer the bills to be returned under protest.

23d, There is great cause for suspicion of an *intended* fraud when a debtor, to an insolvent, pretends to have a demand on him, or to set off an account with him, and, because the insolvent requests it of him, he accepts the insolvent's bill, or underwrites a third bill payable to some of the insolvent's creditors; if he pays the said bill, or if the third, which he subscribes, should be returned under protest, and he is forced to pay the re-exchange and charges, be it which way it will, it gives a great deal of room to suspect that there is

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such an understanding between the debtor and his insolvent creditor, as may easily turn out to the prejudice of the insolvent's creditors; for, by this means, they may find an opportunity of making many such bills.

24th, When a possessor of a bill has neglected to procure acceptance in time, and the acceptant, after the drawer's failing, refuses to accept, in this case, the possessor has no privilege, or preference, more than other creditors, to the effects that the acceptant may have of the drawer's in his hands, though the drawer drew merely upon *those* goods, and it would have been accepted, if demanded, before the drawer's failing had been known.

25th, When an acceptor of a bill hath remittances made to him for provision, on the account of the party for whose account he hath accepted bills, and while these remittances are in his hands, and before he hath discharged the said draught, the said acceptor fails; in this case, the principal must answer the re-exchange and charges, and must be content to come in with the rest of the acceptor's creditors; but if, upon the acceptor's failing, the remittances are found in *his* possession, and have been received, then the principal, that made those remittances, has

has a right to them, and nobody else, they being to be paid to his order; and, though the creditors have received the same, after the acceptor is become insolvent, yet they must repay the same again.

26th, The possessor of a bill, protested for non-acceptance, or non-payment, whose drawer and acceptor are both failed, must concur with the rest of the creditors, not for the value only that was paid, but for the re-exchange and charges, and for the sum that the drawer and acceptor were to have paid, if they had not become insolvent.

27th, If both the drawer and acceptor fail, then the possessor hath right and title to demand payment of both their effects, &c. and he may chuse with which he will first begin, and where he can soonest procure payment or satisfaction; and, if one's effects will not answer his demands, he may then get as much as he can of the others, as they are both obliged.

28th, And the same right that he hath to the effects, or whatever else is belonging to the failed drawer and acceptor, till he is satisfied, he hath also the like against any or all the endorsers, if the bill is returned unaccepted; if any of these come to fail, and if
the

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the bills be accepted, if the acceptor, drawer, and endorsers do all fail, he may come upon all their goods and effects for satisfaction.

29th, The possessor may demand the full sum, with all the charges, out of the goods and effects of that failed drawer, acceptor, and endorser, where he first sets on as creditor, and what he receives he must place to account in part of his demands; and, if not satisfied there, he cannot demand the whole again of another, but only the remainder; and so from one to another, till he be satisfied in full.

30th, If the possessor of a bill, whose acceptor, drawer, and endorsers are all failed, receive something in part of satisfaction of his demands, if the failed's trustees do thereupon demand an acquittance, with the cession of the action to him, or them, then the possessor must not acquit, nor transfer, more of his action to him, or them, than for the value that he hath received.

31st, When the possessor hath received, of one of the parties that failed, a part of his demands, and comes to another of the failed to demand the remaining part, then he cannot make a cession of his action against him from whom he received the first part of his demand, because he was there admitted into the
the

the *concourfe* of the whole demand, and accordingly received his proportion; fo that though a poffeffor enter into a *concourfe* with the other creditors, and takes in as much as he can get of his debt of one of the parties that fails, and he thereupon doth abfolutely difcharge him, yet he may for the remainder come upon the other endorfers, or drawer, until his bill be fully fatisfied, only he cannot transfer his action againft him whom he hath difcharged.

32d, When the poffeffor, whose drawer, acceptor, and endorfers are all failed, does firft receive in part of his demands of one of the failed for whose account the bill was drawn, but hath either drawn or endorfed, or accepted the bill for another's account, without having any effects in his hands, then the poffeffor, and the party from whom he received in part, must enter into a *concourfe* between themfelves, and they must demand of the others, or any of them that is failed, the *supra fums* with the charges.

33d, If the poffeffor of a bill fhould agree and compound with the acceptor, and the drawer is the acceptor's debtor, for the fum he accepted, though the drawer is thereby difcharged from the remitter and poffeffor, and alfo of the faid acceptor, yet the acceptor cannot

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cannot charge or debit the drawer for no more of that bill than he effectually paid, according to the said composition.

34th, But if the possessor hath made this composition with the acceptor without the remitter's order, or consent, the remittance being for the remitter's account, the possessor must be obliged to pay the whole sum to him.

35th, If the drawer and endorser, being failed, deny the bill they have drawn and endorsed, and the acceptant hath accepted, and it was for their own effects, that the acceptor hath in his hands, or that they have since, or before acceptance, made provision for discharging thereof, they must, at their creditor's request, prove the same.

CHAP. IV.

*Of the Payment of the Value by the
Remitter to the Drawer ;
Particularly foreign Bills of Exchange.*

1st, **I**N exchanging credit *must* be given, but the drawer had need to observe to whom he gives credit, that he gives not his bills to him that cannot, or will not pay the value ; and the remitter had need to observe whom he credits, that he gives not his monies to one that cannot, or will not pay his bills ; so that the one, as well as the other, must be carefull, and inquire into one another's security.

2d, Bills are sometimes given by one who will himself discharge the same ; sometimes they are charged on a debtor, who is to discharge them ; but the value of bills are commonly paid in ready monies, and if the drawer be satisfied with any thing else, it is reckoned for and as ready monies.

3d, All bills of exchange that are negotiated, or concluded in Holland, or Hamburgh, or any other places where banks are erected, (abroad) or payable in bank, if they exceed
E a certain

26 *The* MERCHANT, TRADESMAN,

a certain limited sum, upon penalty that such bills, exceeding that sum, not paid in bank, shall be adjudged as not satisfied, and of forfeiture of a certain sum to the bank, besides by those that act contrarily; nor must a broker suffer himself to be employed about any bills exceeding that sum, to be payable out of the bank, or to act any thing to defraud or evade the said statute, or order, by dividing the sums and lessening them, that they may be payable out of the bank, upon penalty of incurring the hazard of being suspended, and deprived of his office and employment.

4th, Notwithstanding what is commonly said in bills of exchange that the value is received, yet the remitter very frequently omits paying the value to the drawer till two or three days after the delivery of the bill; and sometimes it is time enough if he pays at any time between the delivery of the bill, and the next post; nor can the remitter delay the drawer any longer, unless it were expressly conditioned that some time should be given for the payment of the value; if he does, the drawer may then forbid the payment of his bill, and demand satisfaction of the remitter.

5th, When a remitter conditions for time to pay the value, till he hath advice of the bills being accepted, in this case, it is necessary

fary for him to make those conditions with the drawer himself, and not for him to rely on the mediation of the broker; and if the remitter has conditioned with the drawer not to pay the value till he hath advice of the acceptance of the bill, if the bill is protested for non-acceptance, he is not obliged to pay the value; but if it be accepted, although it be one whose sufficiency is suspected, he is still obliged to pay the value.

6th, The payment of the value of a bill, drawn by A, as having a full power from B, must be made to A, but A must be obliged to make his power appear; and so, in the name of the principal, he must be paid the value, and discharge the remitter accordingly. No remitter should pay the value of a bill but upon an assignment, or acquittance, from the drawer, expressly signifying, that the payment is for the *value* of such a bill; and this he is to observe as well in the payment of bank, as in current monies.

7th, A sensible remitter will not offer to pay in cash, or in current monies, what he is obliged to pay in bank, without an acquittance, or assignment, because such a payment is not satisfactory, and is contrary to order.

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8th, If the value of a bill, either in bank or current monies, be paid to the drawer by any other than the remitter, for the remitter's account, or by his order, in case it appears that such monies are not paid to the drawer upon the remitter's account, and by his order, the drawer would act very cautiously if he demanded a note under the payer's hand, signifying by whose order, and for whose account he makes such payment.

CHAP.

CHAP. V.

Of negociating, drawing in, or endorsing

BILLS of EXCHANGE made payable to order.

1st, **A** Remitter, that remits for another man's account, acts wrong if he orders the bill to be paid to his own order; and so endorseth them; for then he himself stands obliged for the value, without having any advantage thereby.

2d, Also he that remits for another man's account, should not make the bills payable to *his own* order, and so endorse them; for then he makes them his own bills, and is obliged to answer re-exchange and charges, &c. but if he order the bills to be made payable to *his* principal, or *his* order, then he is obliged for no more than the sum he received, and may place the re-exchange and charges to his principal's account.

3d, If any remit, for his own account, with design to re-draw the same himself, or orders it to be re-drawn by some other, in some other place, or for some other account, &c. then they must observe to order the bills
to

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to be made payable (or so endorse them) to their own order, or to the order of him that shall re-draw them; for none can negotiate, or re-draw a bill of exchange except it be made payable to his order who must negotiate it; because a bill made expressly payable to one, must be payable to him, and no other.

4th, In the re-drawing of a bill, the re-drawer is looked upon as the absolute and first drawer, and the remitter as the first remitter; so that the endorser of a bill, is as strictly obliged, as the first drawer and maker of it, and the possessor thereof hath as much right and law against him, as against the first drawer.

5th, The re-drawer, or negociator of a bill, does not make a new bill, but endorseth the old in such words as these;

*Pay this for me A. A. (or his order)
the value hereof, in my own hands, (or from
B. B. or &c.)*

C. C.

By this endorsement, he to whom the bill is sent, is the true and right possessor of it, and needs no other assignment, transport, or any other title or right; neither need he give the
drawer

drawer or acceptor any further account of it, viz. how he comes by the bill. And thus, when the endorsement is made payable to order, he, to whom it is endorsed as payable, may again endorse it; and so it may be as often endorsed as there is room for endorsements on the bill.

6th, The acceptor himself, as well as any other, may freely negotiate those bills of exchange that are accepted by him for his own account, if they be made payable to order by the first possessor and endorser, and he may again endorse and negotiate them, and make them payable to his (the acceptor's) order; and, for all this, the first endorsers do still remain obliged.

7th, If the endorsement has no more than *pay to N. N.* and it is not expressed from whom the value was received, or was recounted, then it is looked upon as no more than a single order, and the endorser is considered still as the principal possessor of the bill.

8th, In all endorsements, the place where, and the time when it was done, ought also to be expressed; and, above all, the endorser must observe to subscribe his name. He that
antedates,

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antedates, or postpones the date, is guilty of fraud and deceit.

9th, A remitter, that hath an endorsed bill put into his hands, must observe if the bill itself is well made, and is complete in all its requisites, as if he himself were the first remitter; but especially, he must observe if in the endorsement the name of him, to whom it must be paid, be well and truly spelt and wrote.

10th, If an endorser commit an error in the endorsing, or hath neglected any thing, so that damage is like to ensue thereby, the endorser is obliged to make good the loss, and neither of the endorsers, before or after him, are any ways chargeable with it.

CHAP.

CHAP. VI.

Of demanding Acceptance.

1st, **A**CCCEPTANCE of a bill may be demanded, by the possessor, as soon as it shall come to hand; except it be only payable at some great fair, then the acceptance cannot be demanded till the fair begins.

2d, Any one, to whom a bill is intrusted, as well as the remitter, or actual possessor thereof, may demand acceptance; and it is the duty of every one, to whom a bill is sent, to procure acceptance, or instantly to demand it.

3d, Acceptance must be demanded of him only to whom the bill is directed to, and if it is in his power to accept it or not, the principal being not bound to accept his factor's or servant's bill, unless he pleases; nor is a factor or servant obliged to accept his principal's bill.

4th, Though the *designed* acceptor hath, by letter of advice, promised acceptance on account of a third person, yet the possessor of a bill cannot compel him to accept the same;
F
but,

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but, however, he remains obliged to the drawer to make good all the loss and damage, either in the exchange and charges, or in credit of the said drawer, seeing he drew relying on the faithfulness and promise of the said acceptant.

5th, To accept a bill of exchange, is obliging one's self to the payment and discharge thereof; and if the drawer fails before the bill is discharged, the acceptor is obliged to pay the same, nor can he have any redress on the endorser.

6th, Acceptance is either verbal, or by writing. A verbal acceptance is obligatory to the performance, and the acceptor must perform his promise. Now a small matter amounts to an acceptance, if there be a right understanding between both parties; as, *leave your bill with me, and I will accept it; or, call for it to-morrow, and it shall be accepted; that does oblige as effectually, by the custom of merchants, and according to law, as if the party had actually signed or subscribed it as usual.* But if the merchant should say, *leave your bill with me, I will look over my account and books, between the drawer and me, and call to-morrow and the bill shall be accepted,* this shall amount to a complete acceptance; for the mention of his books and accounts, was really

really intended to see if there were effects in his hands to answer the draught, without which perhaps he would not accept the same. And so it was ruled by the lord chief justice Hales, at Guild-hall; and, among merchants, such verbal acceptances are binding, and are taken for acceptance of a bill, if the same can be proved by witnesses: and if, afterwards, the person, that has thus accepted, shall refuse to set his name to the bill, and to write under *accepted*, according to the custom of merchants; in this case, the possessor may rest satisfied with such acceptance until the time of payment; and, if payment be not made in due time, the possessor of the bill may take his course, in law, against the party so accepting, who doubtless will be compelled to make good the payment, provided the bill is first protested in due form for non-payment. It is but reasonable such acceptance should be good and binding; for it may so happen that very bill of exchange was only sent for provision to the party to whom it was made payable, to the end he may have another bill of exchange charged and drawn upon himself; and he, having a verbal promise of the bill payable to himself, upon confidence of this, he may chance to accept the other drawn upon him; or, it may be, the bill was sent to furnish him with money to buy some commodities for the person that

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remitted the same, and, upon some such acceptance, supposing the money will be paid him in time, he may chance to have bought the commodities for his friend, and may have written to his friend, and given him advice, that he has promised acceptance, or, that he doubts not of acceptance, or the like; and, upon such advice given, his friend will take notice thereof, and make his account accordingly. And truly, if a verbal acceptance was not binding, there might happen great inconveniences, in trade, between merchant and merchant, among whom, in their way of commerce, their word is, or ought to be, as binding as their writings,

7th, In most places abroad, accepting, by writing, is done two ways, either by letter, or by the acceptor's writing under the bill; and if the acceptant, by letter, does advise the possessor, of the bill, that he will accept, and does accept it, it is as obligatory as if he had underwritten it with his own hand.

8th, When an acceptant accepts a bill, he underwrites his name, and the time, thus,

Accepted, A. B.

But, if the bill is payable at so many days or weeks sight, he adds, to the acceptance, the day when he accepts it, thus,

January 7, Accepted, A. B.

But

But generally, in such bills as are to be paid after sight, some use the words, *seen; or shown me;* adding the day when, or both, as, *seen and accepted, &c.*

9th, It is customary, in some places, for him that demands acceptance, to leave the bill in the hands of the acceptant, or party the bill is drawn upon, unless he presently declares whether he will accept it or not, till he compare it with his letter of advice, and to give his resolution, and note it in his memorial; but then, before the return of the post, he demands it again, and a positive answer; and if he refuses accepting, it must instantly, without delay, be protested for non-acceptance.

10th, And, in Amsterdam, if bills are payable in cash, or current monies, they ought presently, without delay, to be accepted; for such bills ought not to be trusted with the acceptant, especially if they are payable to order.

11th, He that receives a bill, without declaring positively, whether he doth accept it or not, and detains the same till there are some bad reports spread abroad concerning the drawer, is obliged to return the bill instantly, that it may appear whether he hath accepted it or not.

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12th, If a bill, by negligence, or on design, is left in the hands of the acceptant till the day of payment, or till bad reports are spread abroad concerning the drawer, and that the acceptant hath not promised acceptance; in such case, the acceptant cannot be compelled to discharge the said bill, on pretence that he should have returned the bill if he would not have accepted; for it is the duty of the possessor to take care of his bill, and to see that the same be either accepted or protested; and, if the acceptant hath not underwritten it, nor promised acceptance, he is not obliged, nor cannot be compelled; but yet, it had been prudent in him, without delay, to have returned the bill to the possessor, and declared that he would not accept it.

13th, He that receives a bill payable at sight, or some days after sight, &c. and detains the same by him some days, without declaring whether he will accept it or not, is obliged, if he afterwards resolves to accept it, to accept it from the day it was presented.

14th, In case a bill, payable at a month after sight, be presented for acceptance on the last day of the month, he may accept it that day, and it will not be payable till the last day of the next month.

15th,

15th, Though the acceptant hath accepted the bill drawn on him, yet the drawer is still obliged till it be paid; but the acceptor, of a bill of exchange, is obliged to the performance, till the bill is satisfied, no length of time, nor negligence in demanding, can weaken or make void the obligation; and, in that respect, an acceptor is more obliged than the drawer; for, if the bill be not satisfied within the limited time, and the possessor neglects to protest for non-acceptance, he thereby loses the advantage of seeking his redress on the drawer, but not on the acceptor.

16th, A remitter ought, without delay, to demand acceptance, seeing delay may breed danger, and suspicious reports, concerning the drawer, being spread abroad, may prevent the acceptant's *accepting* of his bills, which he before would have done, if the acceptance had been demanded; and if, by fraud, one bill should be twice drawn in, he that demands acceptance first, and gets it, shall oblige the acceptor to make good payment to him; whereas, the other, that has neglected, must seek redress on the endorser, and the case may be as it will, having once got acceptance, the remitter will have two obliged for the payment, whereas, otherwise, he hath but one.

17th,

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17th, It does also very much tend to the security of the drawer (whether it be for his own, or another's account, especially when the bill is payable at sight, or some days, or weeks, or months, after sight, or at usance, when usance is reckoned after sight,) to get the acceptance procured without delay, for otherwise he can make no true account when his bills are due, and when payable; and, in all cases, the acceptance is an obligation and security to the drawer, as well as to the remitter.

18th, A drawer, if he doubts of his bill being accepted, should recommend the same to some of his correspondents, residing at the place where it *should* be accepted and paid, to prevent the disrespect and dishonour of his bill; and, if the bill be made payable to order, he ought to give the remitter notice to whom the possessor shall address himself, in case the person, on whom the bill is drawn, denies to honour and accept it.

19th, When a bill is presented for acceptance, the acceptant should take special care that the bill presented be of the same tenor with the *letter of advice*, before he declares whether he will accept or not; because, he that inadvertently accepts, must pay the bill, no exceptions being able to excuse him afterwards.

20th,

20th, What is once accepted, can no ways be disannulled and made void; an acceptor is obliged to pay a bill, though he had it not in his hands, nor perused it, if it can be made appear that he in words accepted it; therefore the acceptant should be careful, and accept no bills but such as he will pay.

21st, As the acceptant is free to accept or not to accept bills, for whose account soever offered, so he is at liberty to accept freely, or *supra* protest simply, or with any limitation or condition.

22d, A possessor should not take acceptance, that is limitative or conditional, whereby either the payment is prolonged or made difficult; or if the tenor of a bill be any way altered, unless he has express orders from the drawer and remitter so to do, but should protest against the acceptor, as if he had absolutely refused to accept it, for whoever does otherwise, and suffers himself to be satisfied with a *conditional* acceptance, must run the risk and hazard himself.

23d, Nor should any person accept of any bills subscribed by a person who pretends to have order and full power from another, unless he knows his seal and hand-writing, and that the principal hath given him advice that he

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hath given such order and power to such and such a person, for such and such ends.

24th, He must also be careful in accepting a bill, if he suspects or believes that he hath accepted one of the same tenor, and for the same sum, and must not accept of the last bill, but under protest that such acceptance shall be null and void if it be found that he hath accepted another of the same tenor, and for the same sum.

25th, A servant must be careful in accepting bills that his master draws upon him; for, if he accept in his own name, he obligeth himself personally, as if the bill were for his own account, though he does no other than his master's business, but the effects he hath of his master's, in his hands, are obliged for the same, so far as they will reach, and if they are not sufficient, he must debtor his master for the rest; wherefore, let a servant, when he underwrites bills for his master's account, say, accepted for *his* master's account, and then set his name underneath.

26th, The usual formality that servants use in accepting bills of exchange, viz. that he accepts the bill, as having order and full power from his master to that end. He who is the drawer will not excuse him, if the bill
be

be made for his own account ; but if the bill be made for the account of his master, and the servant accepts it on *those* terms, then that acceptance would not oblige him, but his master only.

27th, If any factor or correspondent desires his friend, or correspondent, to draw for a certain sum on him, and promises to accept the said bills, and when the bills come, he refuses to do the same, such a factor is a knave, let his excuses be what they will ; and he ought to be obliged to accept the said bills, if they be according to his orders, and not only make satisfaction for the loss and charges, but also to the drawer, for the discredit done to his reputation, and to be punished severely for his knavery besides.

28th, If a bill be drawn on two, or more people, they ought all to accept it ; and, if any one refuses, the bill must be protested : but if it be drawn on two, or more, and it is expressed *To A. B. and C. D.* or either of them, its being accepted by either of them is sufficient.

29th, If a name of a bill be mended, or interlined, the merchant, on whom it is drawn, acts wrong if he accepts such a bill ; but, if he does, he will be obliged to pay it ;

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for, if a name is mended, or interlined, it is no sufficient cause, or legal warrant, to refuse the payment when it falls due, if the name was so interlined, or mended, before he accepted the same.

CHAP.

CHAP. VII.

SHEWING what the Possessor of a Bill of Exchange, protested for Non-acceptance, and is not accepted supra Protest, together with what the Drawer and Endorser, are obliged to do.

1st, **H**E that hath a protested bill, for non-acceptance, whether he be the true and real owner, or only a third person, who it is sent to, to procure acceptance, must, if it be not accepted supra protest, advise the person (who sent him it to get accepted) thereof; and must give or send, to the said person, either the protest alone, or both the bill and protest together.

2d, If a bill be made payable, positively, to such a person, and acceptance is absolutely denied, then both the bill and protest must be returned from whence they came; but if acceptance be delayed, and not absolutely denied, but hopes are given, by the acceptant, that he will accept the next post, he expecting more sufficient orders and further advice, and that then he may accept the protested bill; in this case, the possessor must only return the protest, and keep the bill.

3d,

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3d, The possessor of a bill, protested for non-acceptance, which is not payable to himself, nor endorsed to him, but is payable to the order of the remitter, or drawer, &c. must only return the protest, and must keep the bill in his possession till payment be demanded of him by the party it is payable to, and to whom it is endorsed.

4th, If the protest is not made in the presence of the acceptant, he being absent, not to be found, or not at home, then the protest ought only to be returned, and the bill must be kept till the day of payment, or till further order, that, if the acceptant be found, he may demand acceptance of him; and, in case of refusal, the most proper way will be to make another formal protest against the said acceptant.

5th, When a bill, made payable to order, that is not sent to the presenter by the first remitter, but by some other, is protested for non-acceptance, then the presenter doth act prudently, if the bill be endorsed and drawn in from other places, if he not only sends the protest to the party he received the bill from, but also gives advice, directly, to the first remitter of the non-acceptance.

6th,

6th, The remitter ought, as soon as he receives advice of a bill being protested, to give advice thereof to the drawer.

7th, A drawer, or endorser of a bill, is obliged, as soon as a protest is shewn to him, either with, or without the bill, to give sufficient security for the payment thereof at the time and place appointed; or else for the first sum, charges and re-exchange, in case it be not satisfied there.

8th, When a bill hath yet so much time remaining, before the day of payment, that the drawer, or endorser, can order the payment at the appointed place and day, then the remitter is obliged (having got security) to return the bill and protest to the place where the payment is to be made, to demand payment of the acceptant; and, if he procures payment, then the postage and charges must be demanded of *him*; and if he procures neither of them, protest must then be made for non-payment, and then the *drawer* is obliged to satisfy the re-exchange and charges.

9th, When a bill is protested for non-acceptance, that is drawn at a long time, and the drawer hath given the remitter sufficient security, then the drawer is not obliged to cause his bill to be accepted by the acceptant,
nor

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nor by any other ; for the security, for acceptance, is looked upon as if it were accepted.

10th, The drawer, or endorser, give sufficient security if they give other bills to the remitter, payable to his order, for the same sum, and due at the same time, that are drawn or endorsed by any merchant that frequents the exchange, and is by all men accounted sufficient.

11th, The remitter is not obliged to take such bills, unless the drawer promises to pay the charges and postage of the protest, and if not all, yet, at least, half provision for this new trouble of the correspondent, and demanding acceptance : but if the drawer appoints any other, at the time and place of payment, to satisfy his bill, *supra* protest, and, in the interim, gives sufficient security, then he need not allow any provision at all, but only the charges of protest and postage.

12th, The drawer, or endorser, of a bill, protested for non-acceptance, must be very cautious in giving the remitter, or presenter of the bill, any other bills, without the redelivery of the first bill and the protest ; or that the remitter give sufficient security for the
the

the restitution thereof, or of the value, in case the said bill should be satisfied.

13th, The remitter is not obliged, nor is it indeed adviseable for him, to enter into such an obligation, because the drawer is obliged to procure acceptance and payment of his bills by the acceptant, or by some other; and the other bills are but only the remitter's security, which may also contain such a clause and condition, that the payment thereof shall only be made for the value of the bills protested for non-acceptance, and were not supra protest accepted.

14th, When a bill, with the protest, is presented to the drawer, and these two can agree for the re-exchange; then he may freely and safely disannul the contract with the remitter, and satisfy him upon the delivery of the first bills with protest.

15th, When a bill is returned, with protest, for non-acceptance, though there be yet a sufficient time for ordering the payment, according to the tenor of the bills, yet if the remitter and drawer agrees to make the bills and contract void, then the re-exchange should be equally adjusted, and that should be reckoned at the price that the best bills on exchange were negotiated at, payable at the

same time ; and, over above this, the remitter must demand half provision, at least, and brokerage together, with the charges of protest, and postage.

(*N. B. It were necessary, to prevent disputes and contentions, that a certain rule and method were ordered for the regulating the price of re-exchanges, when there is occasion for it.*)

16th, When the drawer and remitter cannot agree about the course of re-exchange, and the drawer, or endorser, will not give any security for the same, but pay in monies instantly ; then it is sufficient for the drawer to return to the remitter the value of the bills that he received, and not pay the exchange till the day of payment comes, and they get advice of what price, at sight, the bills were made, that post, or the next, and accordingly the drawer is obliged to pay the remitter, how much higher or lower soever it be, and the remitter is obliged to be satisfied with it ; but then, in case the remitter will neither at first, at the payment of the value to him, nor at last, at the payment of the re-exchange, part with the bills and protest, the drawer may detain *his* monies, till he give security for the restitution thereof.

17th, If all the bills be not to be had, the drawer must be *very* circumspect in his making the contract void, and must not pay any monies but upon sufficient caution for the re-delivery of the bills and protest, and for all damage and loss that may accrue thereby.

18th, When the time of payment is so near that the drawer, or endorser, cannot give other orders for the payment of the bills, at the time and place appointed, then the possessor, or remitter of the bill, is obliged, upon sufficient caution and security offered to him for re-exchange and charges, *viz.* to wait till the day of payment, and till the course be known from the place where the first payment should have been made.

19th, Though an endorser hath satisfied his remitter for the re-exchange and charges, of a non-accepted protested bill, yet the drawer, or an earlier endorser, is not obliged to do the same, but may insist upon giving security, in manner and form as is above mentioned.

CHAP. VIII.

Of the Time of paying Bills.

1st, **T**HE time of paying of bills is usually agreed upon between the drawer and remitter: sometimes on a certain and fixed day; sometimes at so many days sight; sometimes at so many days, weeks, or months after the date; sometimes at usance, half usance, usance and half, double and treble usance.

2d, A bill, payable at a certain day, is understood to be payable on that *same* day when it comes, according to the *stile* and place where the payment is to be made; so that a bill made at London, payable at Hamburgh, on the last of November, must be paid on the last of November, *old stile*, or the *stile* of Hamburgh; and on the contrary, a bill, drawn at Hamburgh, payable at London, the last of November, is payable at London on the last of November, *new stile*, or the *stile* of London.

3d, If a bill be made payable at some weeks after sight, or date, then the weeks must first be reduced into days, and seven days must be reckoned for a week; and, in counting the days, the almanack must be followed,

followed, taking the first day after the sight, or date, for the first day; and so forward, one day after another, without excluding either Sundays or holy days, and the last is the day of payment, whether in the beginning, in the end, or middle of the week.

4th, If a bill be made payable one month or two after date, or after sight, then the day of payment falls on the same day of the following month, &c. that the bill was presented or dated; and if the month, the bill is to be paid in, hath not so many days as the month the bill was dated or shewn in, then the day of payment falls on the last day of the month; as for example: A bill is dated the 7th of January, and is payable a month after date, this bill is payable on the 7th of February: again, A bill dated the 30th of January, and payable one month after date, this bill is payable on the 28th or 29th of February, being the last day of the month.

5th, If a bill, dated the 27th of February, payable at usance, or one month after date, and is presented, on the 28th of February, for acceptance, then it falls due on the 28th of March; but if it be dated ultimo February, then it is not till the ultimo March; and so in June and July, the one having thirty days, the other thirty one; and this the acceptor
may

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may alter if he pleases; if, for the 30th of June, he writes ultimo, it will not be due till ultimo July.

6th. The *circumspect* remitter, in negotiating, will have a regard to the time, and take his measures accordingly, and keep his monies till such time as he knows there will be great occasion for it at the place where he is, or remit to such a place to be remitted back again: also a drawer must observe to take such an opportunity to draw in his monies, when he knows there is money enough stirring; for the scarcity of bills will advance, as the contrary lowers the price of bills of exchange to any place.

7th. When any difference arises betwixt the possessor and acceptor, of a bill, about calculating the time of payment, that is to say, the precise day that the possessor will demand payment, according to his own reckoning; and if, on the last day's respite, he procure not the payment, he should and may protest, and send the same away; but he must keep the bill till the day of payment, according to the acceptor's reckoning; and then, if he does not get his money, he must make a new protest.

8th. Bills, made payable at two or three days after sight, or at sight, should not have the

the privilege of the *days of grace*, especially if they be five, or six, or more days, but should be paid within twenty-four hours after they fall due, or be protested. The reason that bills are made payable at such short sight is, because the remitter hath *present* occasion for his money: but this is not always regarded; the days of grace being often claimed here upon *inland bills*, although a bill shall be drawn at sight, or at a certain number of days after sight.

9th, To reckon the precise time of the payment of any bill, payable at any time after date, it is necessary to observe the difference of the old and new stile, if the places from whence it is drawn, and on which it is drawn, observe a different stile. For better information herein, the following places observe the new stile.

Great-Britain, Ireland, and Sweden; Amsterdam, Rotterdam, Antwerp, Haerlem, Middleburgh, Ghent, Brussels, Brabant, and most of the Netherlands; Paris, Lyons, Bourdeaux; and all France; Lisbon, Oporto, and all Portugal; Madrid, Cadiz, Bilboa, and all Spain; Leghorn, Venice, Genoa, and all Italy; also, in Germany, all the Popish Electorates and Principalities; Augsburgh, Dantzick, and all Poland.

And

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And the following observe the old stile, being eleven days after the other.

All the Protestant Electorates and Principalities in Germany; all Denmark, Embden, the Protestant Cantons of Switzerland, Hamburgh, East Friseland, Geneva, Holstein, Lubeck, Stratzburgh, all Saxony, Riga, Leipfick, &c.

10th, To cast up the time that a bill falls due on; as, for instance, London draws a bill upon Hamburgh, payable at usance, dated the 2d of March; here it must be considered, that the usance, or month, will expire on the 2d of April, old stile: and, because we reckon *our* time by new stile, or eleven days before them in Hamburgh, therefore take eleven days from the 2d of April, and the remainder is the 22d of March, on which day the bill is due and payable in Hamburgh; or, by taking eleven days from the 2d of March, new stile, the remainder is the 19th of February, old stile, and that day month is the 22d of March, old stile.

CHAP.

CHAP. IX.

Of paying Debts with Bills of Exchange.

1st, **I**N a pure and real exchange, a drawer receives money of the remitter, and gives bills of exchange for the same, wherein he promises himself, or by his order, to pay the value he received, according to the conditions, in ready money: but in this, which is called *mixed*, or *debt exchanges*, the drawer receives no monies, but, being a debtor, he gives his bills to his creditor for the payment of his debt, and the creditor does hereby become the remitter, or negociator of the bill.

2d, And, there are other bills made for the recovery of a debt, or else to assure the creditor of precise payment for the goods that the debtor hath bought for time.

3d, Whether the debtor makes these bills payable by himself, or by any other person; or, whether the debtor and creditor agree about the price of the exchange, or not, the debt doth change its nature, and the debtor, that gives the bill of exchange upon himself, or upon another, doth make himself liable to the law of exchange; and may, upon failure of payment, be prosecuted accordingly.

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4th, It is very necessary, in these bills, to express whether the value was paid in monies, or in goods; or if it is tending to the discharging, or lessening of his debt, if the drawer does but effectually receive the value, the bill stands good.

5th, He that gives a bill for an old debt, must demand, of his creditor, an acquittance, wherein must be acknowledged satisfaction for such an old debt; or for such goods, in such or such a bill of exchange received; or for so much of the debt as the bill of exchange reacheth to: and, in such a case, the creditor will demand a note, or receipt, of the value of such a bill, either in an old debt, or for goods bought; either for the full payment thereof, or for lessening the said debt.

6th, When a creditor hath received a bill from his debtor, or in part of his debt, if his debtor should prove tardy, he must by no means be persuaded, by his debtor, to derogate the least from the strict course and law of exchange, by protesting, &c. nor grant him longer time, unless the debtor doth give him, under his own hand, that it shall be no prejudice to him, the said creditor; and that he, the said debtor, must also declare, that, the said creditor shall have the law, in full force, against him, the said debtor, upon failure of
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the payment of the same, as if he had actually protested in due form and course; for, without this, the debtor may disown such an agreement, or request, made to the creditor; and, in case he would not pay, he may set his creditors at defiance, as having neglected the necessaries to be done for the recovery of the monies.

7th, When a creditor receives a bill from his debtor, by him drawn on another, in another place, with request to demand the same, and, in case of payment, to place it to his account; in this case, the creditor must ask his debtor whether he shall draw or remit the product, and he must also know of him by whom he shall cause demand to be made; that, in case of loss, there may be no dispute.

8th, The bills, that a creditor makes himself, upon his own correspondent, at the request of a debtor, when they cannot be paid at one time, must be reckoned mixed, or debt exchanges.

9th, When it falls inconvenient for the debtor to pay his debt at due time, if he desires longer time, promising satisfaction, and if it suits with the convenience of the creditor to wait a longer time; then it is usual, if the creditor is satisfied with the sufficiency

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of his debtor, to request of him to draw on his *own* correspondent for his debtor's account, with order to re-value the same at the day of payment.

10th, If a creditor draws for the account of his debtor, he ought to make those bills single and apart for the just sum that the debtor must pay; or, at least, he ought to order his correspondent to keep an account of such a specified sum apart, and to re-value the same. This is done in order for the debtor to know what sum he is to pay for the re-exchange.

11th, And to distinguish the account apart, the creditor, or drawer, usually orders the acceptor to draw on the debtor with his obligation; or upon himself for account of the debtor.

12th, It is also usual, for one friend to pleasure another, to draw on his correspondent, per cento apart, for a separate account, and to be kept apart, that the friend may have the use of the money until the time of the payment of the re-exchange.

13th, In all cases the acceptor looks upon the drawer, who must answer for the draughts and re-draughts; but the loss, by the exchanges and charges, must come to the debtor's account, or to him for whose pleasure the bill was made, or for whose account the bill is drawn.

C H A P.

CHAP. X.

Of protesting for Non-acceptance.

1st, **I**F a bill is presented for acceptance, and the acceptant refuses absolutely to accept, then the possessor is instantly obliged, without delay, to make protest for non-acceptance.

2d, If the acceptant cannot presently declare whether he will accept or no, but promises shortly to do it, or at the return of the next post; then the possessor of a bill may, without any prejudice, at the request of the acceptant, wait some days, or till the next post day, and need not protest; yet, if he will not wait so long, he is not obliged thereto, but may, if he will, instantly protest, notwithstanding the requests, pretences, or excuses of the acceptant.

3d, As the acceptance of a bill may be demanded by any person whatsoever, that hath the bill in his hands; also, in case of non-acceptance, any person whomsoever, that is intrusted with the bill, may protest, although his name is not in the bill, nor in the endorsements.

4th,

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4th, Protest is commonly made by a notary public, in the presence of two credible witnesses ; either in the presence of the designed acceptant himself, in any place, or his house, or lodgings, where the notary shews the bill, and demands acceptance, ; and, in case of refusal, he protests for all charges, loss, interest, exchange, re-exchange, &c.

5th, If the notary meets the acceptant, and he absolutely refuses to accept, then it is usual for the notary to demand the reasons thereof ; which reasons, he is obliged to insert in the protest.

6th, If the designed acceptant would not formally affront the drawer, he may, and it is usual to give such reasons for his refusal, that tend least to his discredit ; of which the most common are, Because he has no advice of the bill ; or, He himself will advise the drawer of the reasons ; or, For want of order from the third person, for whose account the bill is.

7th, It is no legal excuse to refuse acceptance, because that a bill is made payable to order, and is not endorsed, or because the acceptant will know, before he will accept, to whom it is payable.

8th, Nor is it a lawful excuse to pretend that he hath accepted the other bill, and that
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he will not accept two bills for one parcel, or sum, because the acceptance may be made with this condition; That the same shall have no effect, if he has accepted one of the bills already.

9th, A possessor of a bill may protest against a limited and conditional acceptance, with the date or subscription of the name of the acceptor, as if the acceptance had been absolutely refused.

10th, If an acceptant makes any difficulties to accept a bill, and the possessor will accept of no conditional acceptance, and therefore protests; and the acceptant gives for answer, That he is ready, or willing, to accept the same for longer time; or, for a less sum; or, on some other conditions different from the tenor of the bill, he does prudently if he adds thereto, *on condition the possessor will declare, instantly, whether he will take such acceptance or not*; and in case he should be silent, or should refuse it, to let him understand that he will not be obliged to his acceptance at any time hereafter.

11th, If the notary finds not the acceptant at home, nor can he meet with him in any other place, then he doth the business effectually, if he demands acceptance of the acceptant's

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acceptant's wife, or of his father, or mother, sister, or brother, man servant, or maid servant, or of any body that is in the house; and, if no body is at home, if he relates the matter to any of his neighbours, and expresses the same at large in the protest.

12th, If the acceptant be abroad, and has left no orders, nor hath given any full power to any to accept the bills that are drawn on him, then the possessor of a bill need not wait his return home, but must protest for non-acceptance at the house of the said acceptant, or at his lodgings.

13th, If the acceptant is not known, nor can be found, then the notary ought to go to the post-house, or some other place where he can conveniently inquire of him, and if he then cannot find him, he must then protest how diligent he was to find him out.

14th, If two persons, of one and the same name, live in the same place, and the possessor knows not which of them the bill is sent to, if they both refuse acceptance, he must protest against them both.

15th, A protest, for non-acceptance, need not necessarily be made where the bill is to be paid; but it may be made at the place
where

where the acceptant lives, or in any other place wheresoever the acceptant is to be found,

16th, So that when acceptance is refused, you may protest instantly, there being no necessity of giving three days, or one hour's respite to consider on it, whether the acceptant will resolve to accept or no.

17th, Yet, at the request of a known honest merchant, sometime may be given, provided his resolution may be known before the departure of the next post after the receipt of the bill; so that the possessor may have time to advise if the bill be accepted, or not, by the said post.

18th, If the party, that accepted the bill, dies, before the appointed day of payment, the possessor must make demand of his executors, administrators, &c. at the last dwelling-house of the acceptant's; and, if they do not presently pay, then must a protest be entered, as you would have done if the acceptant had been living.

19th, If a party, to whom a bill is payable, should die before the bill falls due, nevertheless, the money must be demanded at the time when it falls due, by one body or another; and if the party, demanding the same in the name of the deceased, shall offer sufficient security to the acceptor, and it be refused, protest must be presently made against him.

CHAP. XI.

Of accepting protested Bills of Exchange.

1st, **I**F an acceptant scruples to give acceptance for account of him for whose account the letter of advice saith it is drawn ; or, if for want of advice, he knows not for whose account it is drawn, then he may, if he looks upon the drawer as sufficient, accept the said bills *supra* protest, in honour of the drawer, for his account.

2d, Though it is not usual to make a formal notarial protest upon an acceptance, for want of advice, but only clearly to express, at the acceptance, that it is *supra* protest accepted, yet it is better, and the acceptant acts more prudently and safely, when he is not fully assured of the sufficiency and honesty of the drawer, that causes the bill to be formally protested ; or, at least, that he causes a *notary* to observe and note, that the acceptance is not simply given, but *supra* protest.

3d, When acceptance is demanded of a bill that is made payable to order, and endorsed by a sufficient man, if the acceptant scruples to accept it for the account of the drawer, or for the account of him for whose account it is drawn,

drawn, he may, *supra protest*, accept it, in honour of the endorser.

4th, When the acceptant doth thus accept, *supra protest*, in honour of the endorser, he must cause a formal protest to be made for non-acceptance, and he is obliged to send the said protest to the said endorser, for whose honour and account he hath accepted it.

5th, An acceptance, *supra protest*, obligeth the acceptor to an absolute payment, as much as if there had been no protest; for it is all one to the possessor of the bill, for whose account it be accepted, if it be accepted at all; and the possessor hath his redress and remedy as sufficiently as ever on all the endorsers and drawers, if the payment is not made at the precise time when due,

6th, A possessor of a bill must be satisfied and contented with an acceptance *supra protest*, for it concerns not him in the least whether the acceptant gives a simple acceptance, or an acceptance *supra protest*, seeing the acceptor must pay the charges to the notary public, excepting he has orders from the remitter not to accept of such an acceptance; and then, in case of refusal of a simple acceptance, he must and may protest.

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7th, When an acceptant hath accepted a bill *supra* protest, and the possessor of the bill is not satisfied with it, and by the notary and witnesses demands a simple acceptance, or, upon refusal, makes a protest; then the acceptant, if he is determined not to accept simply and freely, does wisely to renounce his acceptance *supra* protest, desiring that it may be so inserted in the protest, and be considered as void and of none effect, as if the same had never been done.

8th, No man, neither the possessor, nor the demander of acceptance, nor any third person whatever, may accept a bill of exchange, unless the acceptant refuses, or is not to be found, or hath left no orders for the acceptance.

9th, When the acceptant will not accept at all, then the possessor himself, after he hath protested for non-acceptance, may accept the same *supra* protest.

10th, This a third person may also do, that is not concerned in the bill, whether the honour of the same bill be recommended to him, or not, and that neither in honour of the drawer, or any endorser, or of the person for whose account it is drawn; that is to say, he may accept it, but it must be *supra* protest.

11th,

11th, An acceptance, *supra* protest, must be done in this manner; the acceptant, *supra* protest, whoever he be, must personally appear before a notary public and witnesses, and there he must declare that he doth accept *such* a protested bill in honour of the drawer or endorser, &c. and that he will satisfy the same at the appointed time; and then he must write under the bill, with his own hand, that he hath accepted it, *supra* protest, in honour of such or such a person.

12th, An acceptance, *supra* protest, may be made so, that though it be in honour of the drawer, yet it may also oblige the endorser; and, in such case, the protest must be sent to the endorser: but these *too* cautious proceedings of some, tend more to the discredit, than the credit of the drawer.

13th, A possessor of a bill is not obliged to accept of the acceptance of a third person, *supra* protest, whose sufficiency he suspects, seeing the drawer is obliged to satisfy the remitter in case of non-acceptance; but if the third person will offer sufficient surety for the payment of the bill, then the possessor must be satisfied, and content himself therewith.

14th, A possessor of a bill is not obliged to accept of the acceptance of a third person,
supra

supra protest, in honour of any of the endorser's, nor of the drawer, if the acceptant, supra protest, will re-draw the same on the endorser or drawer ; unless he declares, that the honour of the bill was recommended to him by the endorser or drawer, or that he hath effects in his hand of the endorser's or drawer's, whereby he can satisfy the bill without re-drawing on either the endorser or drawer.

15th, When the possessor of a bill hath accepted of the acceptance of a third person, supra protest, in honour of the drawer, then the drawer is in no ways obliged to give any further satisfaction to the remitter ; but if the acceptance be made in honour of an endorser, then the bill, in respect to the drawer, is so absolutely protested, as obliges him to give satisfaction either to the endorser, in whose honour it was accepted, or to the remitter, as if the acceptance, supra protest, had never been made.

16th, Whomsoever accepts a bill supra protest, puts himself in the place of the first designed acceptant, and is as absolutely obliged to make the payment without any exception ; and the possessor hath the same right and law against such a one, as he would have had against the first designed acceptant, if he had accepted.

17th, He that accepts a bill, *supra* protest, may lawfully demand a recompence for the credit given to him in whose honour he accepted, as well as provision, postage, and other charges ; and, in case the acceptor should be forced to re-draw the parcel on him for whose honour he accepted, he ought truly and faithfully, without contradiction, to accept and honour his said acceptor's bills, and return him thanks for his service.

18, No man ought to accept a bill, under protest, in honour of the drawer, unless he has first spoken with the designed acceptant, and knows the reasons why he suffers it to be protested ; but if the acceptance be in honour of an endorser, this information is to no purpose.

19th, When a bill is protested for non-acceptance, though the drawer and his hand be never so well known, if the person, for whose account it was drawn, be unknown, and cannot be found, then no man ought to be forward, or too liberal in accepting the same, *supra* protest, in honour of the drawer.

20th, He that accepts a bill, under protest, in honour of any endorser, or of the drawer, though it be without their knowledge or order, yet he hath redress and remedy on the
same

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same person for whose honour he accepted, who is obliged to indemnify him, as if he had full orders so to do.

21st, If a drawer, or endorser, in whose honour a bill is accepted, under protest, return an answer to the acceptor, *supra* protest, and approves of the said acceptance, then the said acceptor may freely pay the bill, without further protest for non-payment; but if the person, in whose honour the bill was accepted, is quarrellsome, and pretends he gave no such order to him, or if he makes no answer at all, then let the acceptor, *supra* protest, cause a formal protest to be drawn against the first designed acceptor; and if the notary does then return it without payment, and the acceptor, *supra* protest, is forced to pay the bill, then he must order the *action*, *right*, and *law* of the bill to be ended and transported, as fully to himself, as if he were the true possessor thereof, that he may have redress on the drawer and endorser, in whose honour he accepted, or on any of the former endorsers.

22d, He that accepts in honour of the drawer, hath no remedy against any of the endorsers, because he only obligeth himself for the drawer.

23d,

23d, He that accepts a bill in honour of an endorser, hath no advantage of any endorser that follows the said endorser, for whose honour he accepted; but he, and all that were before him, even to the principal and first drawer, are all obliged to make him satisfaction.

24th, When an acceptant gets advice that a certain sum is drawn upon him, in two first, or two second bills, of one and the same contents, date, and sum, but endorsed to be paid to several; let him accept of neither of them, neither freely, nor under protest, in honour of the drawer, unless he hath letters of advice, of each particular bill, from the drawer.

CHAP. XII.

Of demanding PAYMENT.

1st, **T**HE possessor of a bill must be careful that it be sent to the place, where payment must be made, in due time; that, at the day of payment, the money may be demanded; and, for fear the post should be uncertain, or detained by the way, he must never keep a bill till the last moment, for fear the day of payment should be past before the post arrives; for, if it is not demanded in due time, the protest afterwards will be of no use in recovering any thing of the drawer; for the possessor of a bill is obliged, at the day of its becoming due, to demand the monies, and must not give, nor admit of any delays, more than the usual days of grace.

2d, He that takes a bill from another, to demand satisfaction, whether he be a merchant, or banker, and neglects to demand it at the day of payment, or within the days of grace, but lets them pass without protesting, is obliged to make good the damage that does, or may accrue thereby.

3d, He that has a bill in possession, which only says *pay*, without mentioning the time when, or that is not dated, or that is not clear and legibly written, payable sometime after date, &c. so that the precise time of payment cannot be calculated, must be very circumspect, and demand the monies at any time, when he can probably make it appear, or it seems to become due.

4th, If a foreign bill is not endorsed, or if the endorsement is not made right, or if there wants any thing in it, yet notwithstanding the possessor of the bill is allowed to demand payment, and the acceptor is obliged to pay him on the delivery of both the bills, if the possessor will, under his hand and seal, oblige himself to procure a third bill for the same sum, rightly and truly endorsed.

5th, Because many times an acceptor knows not to whom his bills are payable, when they are made payable to order, therefore the possessor of such a bill is obliged to give him timely notice thereof; and it is the custom among merchants of credit and repute, that trust one another in Holland, the possessor of such a bill, at the time of payment, to send the accepted and endorsed bill to the acceptor's house, and desire him to order the value to be wrote off in bank : but according to a special

order made some years past, that no possessor, of an endorsed bill, in Amsterdam, is obliged to give it out of his hands, before he has received satisfaction; for the possessor must, on the day when the bill is due, declare to the acceptor, that he is to have payment by virtue of the endorsement; and, in case of refusal, before the delivery of the bill, the possessor must carry it to one of the book-keepers of the bank to be registered, from whom the acceptor must fetch it, after he has ordered the parcel to be wrote off to the possessor's account, but not before, &c.

6th, A possessor of a bill, payable to himself, or to order, is not obliged to part with his bill before it be effectually paid, or satisfied; and if he suspects the acceptor, he must not exchange his bill for an assignment, whether on a banker, or on any one else, but he may detain the bill till the assignment is satisfied; and, if he pleases, he may write on the bill that he hath received, from the acceptor, an assignment, or note, upon such and such a person; and, moreover, it is to be observed, if you part with your bill, and the money is not instantly paid, you cannot easily form a protest.

CHAP. XIII.

Of the Acceptor's paying BILLS.

1st, **BILLS** must be punctually paid according to their time and contents, in such a manner as is usual and ordinary, at the place where they are to be paid, unless there be some certain expressed conditions mentioned in the bill to the contrary.

2d, The payment of a bill must be made to the true and lawful possessor of it; wherefore accepters must be *very* careful and circumspect in the paying of their bills, for fear of their being obliged to pay the same twice.

3d, If payment is demanded by a suspicious person, that cannot make it appear that he is the person the bill is made payable to, either originally, or by the endorsements; or if he be a stranger, and hath no acquaintance, then it is most adviseable for the acceptor to defer the payment to the very last day.

4th, No bill must be paid before it comes due; if it be paid before, the acceptor runs the hazard and danger that may ensue; yet this is no hindrance to the negotiating and endorsing those

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those that are made payable to order ; however, the acceptor must not pay before the time prescribed.

5th, When a bill is accepted, that is made payable to a certain person named therein, if the said person desires the acceptor to pay it to any other, and he, the acceptor, promises that he will, then he is obliged thereto, whether the possessor should in the interim fail or not.

6th, When a bill is made payable to a certain person, as to him for whose account it was remitted, as the principal owner, and true proprietor of the same, he may revoke his order, and cause it to be paid to another person ; and if his order comes before the payment is made, the acceptor is then obliged to deposit the monies in other hands, till such time as it shall be made appear who of right the money belongs to : or if he hath orders from the remitter, he may suffer the bill to be protested for non-payment ; but when a bill is made payable to order, then the remitter makes him, to whose order it is payable, sole master of the bill, who hath power and authority to dispose of it as he will, and the acceptor must pay it to his order.

7th, Bills that are made payable at such a precise day, are paid the same day by those that

that are punctual ; but if their day of becoming due be calculated, according to usance, or after the date, or sight, the payment is not usually made till the days of grace are expired ; although the payment may be made the very same day, without the least prejudice to the payer.

8th, Bills payable at sight, or two or three days after, may be paid as soon as presented, without prejudice to the payer ; because it may be a great prejudice to the possessor of the bill to stay for the monies till the respite days are expired.

9th, All bills must precisely and punctually be paid within the days of grace, and these days of respite, or grace, are in some places more, in some fewer, and are introduced by custom, or ordered by the magistrates ; and any possessor of a bill may safely, without any prejudice, wait to the last of these days, without protesting for non-payment ; nay, in some places, he is obliged to wait so long.

10th, The days of respite, or grace, at the principal places of exchange, are as follow ; in London three days, holydays and sundays inclusive ; in Amsterdam, Rotterdam, Middleburgh, and Antwerp, six days ; in Cologne, Breslaw, Nuremberg, and Venice, six days,
but

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but the holydays and fundays are not included ; at Franckfort, out of the fair, four days ; at Leipfick, out of the fair, five days ; and at Augsburgh, five days ; and, in all the places above-mentioned, bills, payable at sight, must be paid within twenty-four hours. Naples eight days ; Dantzick and Koningsberg ten days ; Paris, Roan, Rochelle, Nantz, Bourdeaux, and all France, ten days, fundays and holydays included ; Hamburgh, twelve days ; Stockholm, twelve days ; Portugal, six days ; Spain, fourteen days ; Genoa, thirty days ; but, in Italy, there are no days of grace allowed, but the possessor of the bill may protest or not protest, according to his discretion.

11th, An acceptor must pay no money upon the single advice of a drawer, though it be expressly said payable to a certain person, unless the bill is likewise present, and accepted ; nor must a bill, payable to order, be paid to any but to the person to whom, by the endorsement, it appears to be due.

12th, No bill can be discounted, or otherways satisfied than in monies, without the voluntary consent of the possessor.

13th, An acceptor is not obliged to pay the bill he hath accepted, to the presenter thereof,

thereof, though it may be payable to order, unless it be endorsed to him; and in case any thing material in the endorsement be wanting, he may demand sufficient security of the possessor or presenter, that none hereafter shall have any demands upon him for the same bill.

14th, He that hath accepted a bill under any limitation or condition, is not obliged otherways to satisfy it then according to the said conditions or limitations.

15th, Though the days of grace are expired, a protest may be entered, and the day when the bill is due is counted part of the limited time; but it is better to protest within the three days at London: and although the days be expired, protest must be made, if the monies are not received; because, without a protest, no further course can be taken at law, neither against the acceptor, nor drawer.

16th, If a bill is made payable, positively, to such a person, and not to such a one, or his order; then an assignment of a bill will not serve the turn, but the monies must be paid immediately to that man, and to no other, otherwise the acceptor may be forced to pay it twice.

CHAP. XIV.

Of protesting Bills for Non-payment.

1st, **T**HE possessor hath no redress on the drawer, nor on the endorser, unless he can make it appear that he made diligent demands of payment before the days of grace were expired, but could procure none, and therefore did protest for re-exchange and charges within the limited time.

2d, In most, or all places of exchange, it is ordered as a law, that, in such a number of days protest shall be made for non-acceptance, or non-payment, if the possessor would preserve his right against the drawer or endorser.

3d, Before any man can protest for non-payment, a demand of the money must be made, in the limited time, by the possessor, or his servant, or by some other person in his name; and then, if the payment does not follow these demands, it must solemnly be demanded by a notary and two witnesses.

4th, This formal and solemn demanding must, at furthest, be on the last day of grace; but if it falls on a holyday, or sunday, it must be demanded the day before, it being then safest to protest.

5th,

5th, Payment of bills, that are not accepted, neither simply nor under protest, may be demanded at the day when they fall due; and, if it be refused, a new protest must be made for non-payment, and both bill and protest may be returned.

6th, When a bill is payable after sight, or at any certain day, and is not presented till after due, if the payment be then denied, the protest must be made on the last of the days of grace for non-payment.

7th, If the acceptor pays a part of a bill, and promises to pay the rest in a few days, within the days of grace; if he does not, in that time, satisfy the whole, the possessor may protest for the whole, and is not obliged to return what he hath received to the remitter, but he must demand of the drawer, &c. the re-exchange and charges for the remainder, that was not satisfied.

8th, If an acceptor of a bill should prove insolvent, or such a thing is reported of him, so that he absents himself from the Royal Exchange, or there be just grounds to believe that he will fail before the bill falls due; the possessor of the bill may demand better security by a notary, and if that is not given, he may protest, and send the protest away by the

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next post; and when the bill is due, if it be not paid, he must send the other protest away for non-payment.

9th, A bill protested for non-payment, being discharged by the drawer, discharges the drawer and the acceptor, from the remitter and possessor, or any other; but the drawer has the same right against the acceptor.

10th, If a drawer fails, and the bill is accepted, the acceptor is obliged to make good the value, nor has he any redress against any of the endorsers; and the case is the same with an acceptor *supra* protest, in honour of an endorser, if that endorser fails, he has no other remedy.

11th, If an acceptor fails, the possessor is not obliged to wait till the days of grace are expired before he makes protest, but may do it sooner if he pleases, after he knows of his failure, and he must presently give advice thereof to the remitter, or else the drawer is not obliged to pay interest and charges. Nor is there, nor can there be any danger in protesting bills before the days of grace are expired; but because the days of grace are uncertain in many places, it is therefore the surest way to protest betimes, rather than to hazard the loss of the law by too long delay.

CHAP. XV.

What Steps the Drawer and Endorsers of a Bill, returned with Protest for Non-payment, are further obliged to take.

1st, **T**HE acceptor cannot be compelled to the payment of a bill unless he has accepted it; nor the drawer nor endorsers to the restitution, unless the bill be returned with the protest for non-payment.

2d, The drawer, or endorser, is obliged, at the producing of the protest, (if it be in all circumstances rightly made, and according to the laws and customs of the place where the payment was to be made,) to give present satisfaction, which consists in the re-payment of the value, the re-exchange and charges; as brokerage, provision, and for the protest and postage.

3d, The remitter, or possessor of a bill, protested for non-payment, is not obliged to compel the drawer or endorser of a bill to make restitution, if he had rather seek his redress on the acceptor; and, on the contrary, he

he is not obliged to look on the acceptor, when he had rather seek his redress on the drawer, or endorser: nor is he obliged to give them any time for the payment; but he may, if the payment is not punctually made, proceed against which of them he pleases, according to law.

4th, At the presenting of a protest for non-payment, made before the last respite day, if the acceptor hath not absolutely denied payment, but only desired delay to the last day; and if the drawer can prove that the acceptor, or a third person, *supra* protest, would have paid the same, he is not obliged to give any caution, or security, much less to repay the re-exchange and charges; because if the bill had remained to the last respite day, it had been paid at the place of payment.

5th, If the payment of a bill is demanded on the day it becomes due, and the acceptor is commanded, by proper authority, not to pay it, the possessor, for all that, may protest for non-payment, and the drawer is obliged to pay re-exchange; but if, by any accidental occurrence, the payment is retarded, or cannot be demanded; and, if a foreign bill, supposing a city is besieged, and the possessor is not allowed to go in, and make his demands; in this case, the drawer is not obliged to make
restitution,

restitution, but the whole sum runs upon the
risque and hazard of the possessor, or remitter
of the bill.

7th, If the endorser unadvisedly makes
restitution for a bill that is protested for non-
payment, after the respite days, and the drawer
refuses to make him satisfaction; then the en-
dorser hath no other redress, but to demand
restitution of the same again from the person,
to whom he paid the value.

CHAP.

C H A P. XVI.

When a Bill is suffered to be protested for Non-payment, and to be returned with the Protest.

1st, **I**F the acceptor, at the day of payment, refuses to discharge such a bill as he hath accepted, and if the bill is returned again to the drawer, with the protest, to demand satisfaction, and the drawer refuses to pay the same, but returns the bill again; then the possessor has as much right and law against the acceptor, as against the drawer himself, &c.

2d, Though the possessor of a bill, that is protested for non-payment, after the respite days are past, hath no redress on the drawer; yet, notwithstanding, if the drawer is yet in credit, the acceptor cannot be compelled to make satisfaction till the bill is sent with protest to the drawer, and is again returned on the acceptor.

3d, A bill made payable for the account of the drawer himself, being not paid at the due time, but protested for non-payment, need not be returned on the drawer, but the possessor

feffor may instantly, without delay, compel the drawer to make fatisfaction wherever he finds him.

4th, An acceptor of an endorsed bill, protested for non-payment, cannot be protested against by arrefts and attachinents if any one or all the endorfers refuse to make fatisfaction, unless the drawer himself also refuses to do it, and this be proved by good evidence.

5th, The acceptor of a bill, returned with protest for non-payment, and again returned on the acceptor, is only obliged to pay the exchange, re-exchange, provision, and postage, and no other charges.

6th, The *exchange* is reckoned according to the price at fight, at the time, and in that place where the protest is made, to the place where the payment must be made by the drawer; and if it be not paid there, then the sum is again increased, with the provision and postage; and then the price is reckoned again upon the whole sum, according as it shall be at that time and place, upon fight, to the place where the bill is to be paid, and the acceptor is obliged to pay the re-exchange and all the charges, although the parcel was not effectually negociated and re-drawn. That is to say, the re-exchange, provision, and postage must

be twice paid, &c. As provision twice for the exchange and re-exchange, the charges are no more than postage, and for the protests; unless the acceptor, by delays and excuses, forces the possessor of the bill upon some unnecessary charges, which the acceptor is obliged to pay; but not extraordinary charges, as for travelling, bribing, nor spending.

7th, The acceptor is obliged to pay interest, if he does not presently satisfy the returned bill, which is to be reckoned from the day the bill became due, to the time of its being discharged, for which the possessor may charge thereon five per cent per annum for interest, at this time in England.

8th, Though the notary public does declare, and in the protest expresses that he protests for all damages, &c. that shall accrue; yet no acceptor is obliged to make good any loss or damage but what is above specified; nor can the possessor with any law or equity compel the acceptor to make good any loss or damage that he pretends to have sustained for want of punctual payment; as the loss of some convenient and profitable opportunity, or any such like thing.

9th, Though the possessor of a bill protested and returned from the drawer unsatisfied, hath thereby a law and a right against the acceptor, and may proceed against him by execution, &c. yet he is not obliged thereto, but he may, at the acceptor's request, spare him, and seek for redress, against the drawer, &c. unless he has express orders to the contrary.

C H A P. XVII.

*Of exchanging for Account, and in the Name of
a third Person, by Procuration.*

1st, **W**HEN an exchange is made in the name, and for the account of a third person, it is when any one negotiates, or makes an exchange in the name of another, by order, power and authority, which he receives from the said third person; and this, among merchants, is called *procuration*: for, by this means, bills may be drawn, subscribed, endorsed, and accepted, not in the name, or for the account of him that doth draw, subscribe, endorse, and accept, but in the name, and for the account of him that authorised him so to do.

2d, Great caution is to be used in giving any man full power and authority, by procuration, to draw or accept bills of exchange; for he that is credited so much, is credited with the credit and estate of him that appointed him, his welfare is in his procurator's hands.

3d, A merchant should be very careful in granting such a power to any one, and ought
to

to advise all his correspondents, especially those whom his procurator may have occasion to make use of, and let them know, in his own hand-writing, that he has granted to such and such a one such a full power to draw in his name bills of exchange, and desire them to give credit to his subscriptions, till he revokes, or shall make void his said power.

4th, He that by procuration in the name of another, *bona fide*, does negotiate, draw, endorse, subscribe, and accept bills of exchange, by underwriting his own name, and his quality, does thereby as effectually oblige his principal, himself being in the mean time not in the least engaged, as if the principal himself had subscribed.

5th, He that negotiates, draws, accepts, endorseth, &c. bills of exchange, in the quality of a full power, and procurator, in the name of another, is obliged, at all times, to prove his quality; and if he cannot do that, nor hath that full power he pretends to, is not only himself to perform all that he hath negotiated with others in the name of the said third person, but is liable to be punished as an impostor.

6th, A remitter that knows business will receive no bills, nor a wise possessor no acceptance,

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ceptance, that is subscribed by the wife of the drawer, or acceptor, or by their servants, or of any other but such as have full power, and instructions, and procuration, or of such as are every way as able and sufficient as the drawer or acceptor himself.

7th, Every remitter, or endorser of a bill should look narrowly to see if the procurator is sufficiently empowered, and that his power is not antiquated, out of date, or recalled, or taken from him.

8th, He that negotiates bills, &c. as a procurator, should, before he concludes the parcel, expressly condition that the bills should be subscribed by him, as having full power and authority from the principal drawer; and if this is not expressly agreed upon, the remitter is not obliged to take such bills, nor to search into the validity of his full power, or the like, but may refuse to give him monies, or to receive his bills, if he has a mind not to take them.

9th, The possessor of a bill must accept of the procurator's acceptance, if the instrument of procuration expressly declares that all bills accepted by him are for the account of the principal; or especially, that such and such bills as the possessor hath are for his account.

But

But if the procuration is not clear and express in this particular, then the possessor is not obliged to take acceptance from any, that he doth not look upon to be sufficient.

10th, He that hath full power to draw bills of exchange in the name and for account of a third person, hath also power to draw in and endorse all bills of exchange that are made payable to the order of the said principal.

11th, A merchant's word or letter to his wife, friend, servant, or other person, to accept bills of exchange, is not sufficient, without an instrument, or formal full power, with hand, seal, and witnesses; but for want of such instrument, if it can be proved that his wife, friend, or servant, have used formerly to accept bills in his absence, and that at his return home he has approved of the same, it will come very close to the matter, and be near as good as a legal and formal instrument.

CHAP. XVIII.

Of Bills of Exchange lost.

1st, **W**HEN bills are made for a sum of money, two or three are usually made of the same tenor, that if one be lost, the remitter, or possessor, may make use of the other.

2d, When the post goes uncertainly out to any place, on which the exchanges are made, or by sea ; or when the remitter orders bills to be made payable to his order, with design to send the first directly to the place to get accepted, and to draw in the other some other way by endorsing, &c. then three or four bills may be made.

3d, When the remitter declares to the drawer that the bills he received are lost, and that he cannot find them, and desires the drawer to repay the value to him, offering to secure him from all damage for the future ; then the drawer acts very wrong if he does it, though the money were for his own proper account, and he could otherwise do it with little inconvenience to himself, because the
remitter

remitter must be content to take new bills; nor can he compel the drawer to restore the value.

4th, And in giving new bills the drawer must use care to see that his new bills be made of the *same* tenor and date of the former, with only adding this difference, that if he had given a first and second bill before, he now follows the number, and gives a third and fourth bill; and yet no drawer will, after the day of payment of his former bills, give his remitter a third and fourth bill, unless the remitter gives sufficient security to indemnify the drawer.

5th, As soon as a possessor observes that he hath lost a bill, at least, before it falls due, he ought to advise the acceptor thereof, that he pays it to none but himself, or his order; and if any other comes to receive it, to take notice of the bearer, and to stop the payment.

6th, When the first accepted bill, which is payable to order, is lost at the place of payment, and the party to whose order it is payable would draw in his second bill against the day when due, but cannot find the first accepted bill, having lost it, and has no third nor fourth bill from the drawer, nor cannot get a third or fourth bill from him, he being
 O dead

dead or absent ; yet the parcel may be drawn and negotiated, if the endorser (in case his hand-writing and seal be unknown to the acceptor) does send a full power and *letter of attorney* to him, to whom he would have it payable, to receive the same ; but if the endorser's hand is well known, and he himself to be credited, then an order in writing to the acceptor to pay to such a one is sufficient, he engaging to secure the acceptor from all damage, &c.

7th, But then also a prudent acceptor will pay no bill that is payable to order, though by him accepted, if the same, or another of the same tenor, is not endorsed as it should be, and shewn to him ; no, not upon the order of him whom the remitter and endorser hath impowered, till the very last respite hour ; and not then neither, but upon the delivery and surrender of *his* accepted bill.

8th, When any hath lost a bill, that is accepted, payable to order, the second whereof, being unaccepted, is regularly endorsed, and come to the hands of him to whom it is payable ; when he presents this second bill, if it be on the day when it is due, the acceptor is obliged to pay the same, if the possessor of this second bill gives security, to deliver up the accepted bill, or to indemnify him from all
future

future demands of the said sum, upon account of the said accepted bill.

9th, When any person misseth his accepted bill, whether directly payable to the possessor, or his order, and the possessor thereof pretends that he hath lost it; or if the possessor hath advice from his remitter, that he hath remitted him, at sight, such a sum, in such or such a bill, &c. and when he opens the letter he finds no such a bill; or if he receives not the letter wherein the bill was inclosed, but hath advice thereof by the next post, and finds that the day draws near for paying, then he may demand payment upon his letter of advice, offering security to the acceptant, to free and discharge him from all future demands of that sum, upon account of the lost bill; and if the acceptor will not then comply, then he can assign the value upon him; and, if he refuses this, he may protest for re-exchange and charges.

10th, When an accepted bill, protested for non-payment, is lost, the drawer is not obliged to make good the re-exchange and charges, unless he gets sufficient security to indemnify him, and free him from all future demands, with promise to restore the sum, with interest, that the drawer paid for re-exchange and charges, in case the bill presented to be lost

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should afterwards be paid, by the acceptor, or by any other, under protest.

11th, It is adviseable for the party, that loses the bill, to go instantly to the acceptor, with a couple of witnesses and a notary, to signify the same to him, and to charge him, at his peril, to pay it to none but those he shall order.

12th, And it is adviseable for no man that hath accepted a bill, to refuse to pay the same, because the bill is lost, provided the owner offers sufficient security to save him harmless; for if a protest is made for non-payment, the acceptor being the wilful occasion thereof, is obliged to make good all the loss, re-exchange, and charges.

13th, Suppose the first accepted lost bill was made payable to him that lost it, and the second unaccepted bill should be made payable to another man, and the money is really paid when due to him to whom the first accepted, but lost bill was payable, the payment is good and warrantable; and the possessor of the second bill can have nothing to say to the acceptor.

14th, Suppose the prima accepted bill was found by a stranger, who demands the money in
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in the name of the party it is payable to ; or that the true possessor should have assigned it over to another man, and taken up the value ; yet this all signifies nothing, if it comes after time, and the money has been paid to the party it was payable to, though without the accepted bill, and he having good security to be saved harmless.

15th, In case a bill of exchange is lost by the acceptant, with whom it was left for acceptance, or it hath been given to a wrong party, or in any other case, if the owner cannot have his bill again, accepted or not accepted ; in such cases, the party that lost the bill must give his note, for the payment of the money, when the bill falls due, to the owner of the bill, or his order, upon the delivery of the second bill, if it comes in time ; or, upon that note, if it comes not in time. If the acceptor refuses this, protest must be immediately made for non-acceptance ; and then again, when due, the possessor, though he hath neither note nor bill, must demand the money ; and, if not paid, protest for non-payment.

C H A P. - XIX.

*When any Person dies, concerned in a Bill,
what is Necessary to be done.*

1st, **I**F a bill is accepted, and the acceptor dies before the day of payment, yet there must be a demand made of the executors or administrators; and in default, or delay of payment, a protest must be made. And though it may fall out, that the monies may become due before there can be administrators, or the probate of the will be granted, that is sufficient delay for a protest, in case of non-payment; so that if the acceptor dies, before the bill becomes due, you must, at the time it falls due, demand the money of his executor, &c. at his last dwelling-house, or place of abode; and, upon their refusal, or delay of payment, you must protest for non-payment, in the same manner as you would have done if the party had been living, and had not paid it at the time it fell due.

2d, But if the party, the money is payable to, dies, and the monies are ready to be paid, and there is no person can give a legal discharge,

charge, a protest ought not to be made for non-payment; because there is no person hath authority, either in deed, or in law, to make it, and a notary ought not to make it; if he does, and the party hath received any prejudice thereby, an action of the case perhaps may lie against him for so doing; nor does it avail, that security be offered to save him harmless, against the executors or administrators of the deceased, for that is an act left to his own discretion; for perhaps the security may not be liked. But whether it be good or bad, makes nothing as to oblige him in law.

CHAP.

CHAP. XX.

What Acceptance is necessary when a Bill is drawn on two or more Persons.

ist, **A** BILL, drawn on two jointly, must have a joint acceptance contra; and if the same is accepted by one, and it is according to the tenor of the bill, it ought not to be protested, only in case of non-payment; and in that case, the acceptor is liable to make the same good: but if it be on joint traders, an acceptance of the one will bind the others. But the same will be otherwise, if a bill of exchange comes directed to two or more persons, in these terms; *To Mr. William Sayer and Mr. George Goodwin, Merchants in London;* in this case, both Sayer and Goodwin ought to accept the bill: or else, if one of them does accept it, and the other refuses to accept it, that bill must be protested for want of due acceptance. But if the bill is directed thus, *To Mr. William Sayer, or Mr. George Goodwin;* or thus, *To Mr. William Sayer, or,* in his absence, *To Mr. George Goodwin;* or, if they should be joint traders and co-partners, *To Messieurs William Sayer and George Goodwin;* or, *To Mr. William Sayer and Company;*

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in this case, the bill being accepted by Goodwin, or Sayer, it is sufficient; because it is according to the tenor of the bill.

2d, A factor of the Turkey, India, or South Sea company, draws a bill on the same, and a member accepts the bill; this, will make him liable, but no other member.

3d, So it is if ten merchants shall employ a factor at the Canaries, and the factor draws a bill on them all, and one of them accepts the bill, and then refuses payment; this will not oblige the rest.

4th, But if there be three joint traders, for the common stock, and benefit of all three, and their factor draws a bill on them; the acceptance of the one will oblige the residue of the company.

C H A P. XXI.

*Of Countermands, and the Danger of discounting
Bills of Exchange.*

1st, **T**H E party, that first delivered the money on the bill of exchange, if the money delivered was for his own proper use, is rightly and properly master of the bill, until it falls due; and he may prohibit the party, to whom it is directed, paying the same, at the time it shall fall due, to the person it is made payable, supposing him to be a factor or agent to the deliverer, although the party it is drawn upon has already accepted the bill; which *prohibition* is commonly called a *countermand*, and ought to be done in due form, and but upon an extraordinary account, because it strikes at the credit of the party the bill is made payable to. For example; If the master, or principal deliverer, makes over money by exchange, payable to his factor or agent, and afterwards he has advice that his factor or agent, takes ill courses, whereby the money and effects, which are in his hands, or which may come to his hands, for the account of the principal deliverer, may be in danger of being embezzled; then,

then, and in such a case, the principal may send his countermand, forbidding the party, the bill is delivered to, paying the bill to that factor or agent, but to some other person; or to keep the money in his hands, when due, till further orders: which countermand must be made, and past by a public notary, in a legal manner; and, by a notary, notified to the party that hath accepted the bill, or that is to pay the money, to the end that he may not pretend to be ignorant of the same. And such a countermand is good and lawful, according to the custom of merchants, and ought to be obeyed accordingly, if the same be notified in due form and time, by a notary, to the party that has accepted the bill, before it be due; and neither the drawer, nor acceptor, can suffer any damage in observing the same. But if the time should be expired, and the money paid according to order, before the countermand comes to hand, and is not notified; in such a case, there is nothing to be done to prevent danger. By what has been said, it is plain, a bill of exchange ought not to be paid before it is due, as shall be shewn more fully in the following articles.

2d, Any time, before the money is due, the drawer may countermand the payment, to his broker, although the bill hath been accepted.

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3d, The countermand is usually made before a notary ; but if it comes without, so it comes under the party's hand, it is sufficient.

4th, If the bill be accepted, and the party desires to have the money before it is due, and it is paid, and then there comes a countermand, it hath been conceived, that it ought not to be allowed ; for as he could not enlarge the time, so he could not shorten it ; for his duty was to follow his order.

5th, If any one pays money on a bill before it is due, and the party breaks, it has been conceived that the party ought to answer the drawer ; the reason being, because the drawer might have countermanded the same, or ordered the same bill to be made payable to another.

6th, So that if a bill of exchange, made payable at usance, double usance, or thirty days sight, or any longer or shorter time ; and when it is offered for acceptance, or at any other time before due, the person it is payable to shall desire present payment, upon consideration of a discount : or if the party the bill is drawn upon, having money by him, and willing to improve it, should solicit the said party to take his money before the legal time of payment, provided he will allow him

him a discount ; the party that shall so pay a draught, runs some danger in not observing orders : for if the money which is remitted, be really and properly belonging to the party that delivered the same to the drawer ; and if the bill be made payable to a factor, servant, agent, or to a friend of the deliverer's, for the deliverer's use ; or if the deliverer should send his countermand, before the bill is due, that the acceptor may not pay the money to such factor, servant, agent, or friend, to whom it was payable, by the tenor of the bill, but to some other person he shall appoint. In this case, the party, that the bill is drawn upon, ought to be liable to pay the same, according to the countermand, to the person who is thereupon appointed to receive the value. For if it is not in the power of the person, the bill is drawn upon, to prolong the time for payment ; so it cannot warrantably be in his power to shorten it ; for the agreement is made between the deliverer and taker, and therefore particular regard ought to be had to it. For though a countermand doth not often happen, it does sometimes ; and who can be certain the same may not come to him, in the payment of bills before they become due.

CHAP. XXII.

If the Figures of the Sum, and Words of the same, disagree; or, if a Name should not be mentioned, or interlined; or, if a Bill should come to hand without Directions, what Steps should be taken.

1st, **I**F it so happens, through a mistake, that the figures and the words of the sum, wrote at length in the bill, should disagree; that is, either the figures should express more, and the words less; or the words more, and the figures less: in either, and in all such cases, you ought to observe the words mentioned at length, and not the figures, until you receive further advice concerning the same. Because, a man is more liable to mistake in writing a figure, with his pen, than in writing a word; and besides, the figures, at the top of the bill, do only serve as it were for a *breviat* of the contents; but the words, at length, are in the body of the bill of exchange, and are the chief and principal substance of the same; and therefore, more particular

particular regard ought to be had to that. And though it may fall out, that the sum mentioned in figures, in the letter of advice, and the sum mentioned in figures, in the bill of exchange, do agree; yet if the sum mentioned in words, at length, in the same bill disagree, you ought to follow the order mentioned in words, at length, in the bill, and not the order in figures, for the reasons aforesaid.

2d, If the name of the party, the bill of exchange is payable to, should chance to be altered, or interlined in the bill, and it is accepted by the party it is drawn upon, it is no sufficient warrant for him to refuse, or deny the payment of the same, when it becomes due, to the party whose name is mended or interlined in the bill, or to his order, or assignment, if the bill was so mended before he accepted it.

3d, If a bill of exchange comes without being directed to any person, only the drawer having set his name to it, but has forgot to direct it to the person he intended to draw upon; yet if in the letter of advice, to his friend, the bill is made payable to, it is mentioned to be drawn on such a person, naming his name; the friend, the bill is sent to, ought to present it to the person for acceptance; and in case that person refuses to accept

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cept it, because there was no directions to him thereupon, the party that presents it ought to protest the same for non-acceptance: for he protests against the drawer because he should have directed it, that it might have been accepted by somebody; and the drawer is justly to bear the charges thereof, for his omission and oversight.

4th, If a bill of exchange, by contrary winds, or other occasion, be so long on the way, that the usance, or time limited in the bill, be expired; and being tendered, both acceptance and payment is denied; protests for both must be made, and the drawer must answer the value, re-exchange, and charges.

CHAP.

CHAP. XXIII.

Of LETTERS of ADVICE.

1st, **E**VERY individual person concerned in a bill, whether on his own account, or if on account of a third person, must be very exact in advising, and returning of answers.

2d, His letters of advice must be full and clear, containing all the circumstances of the bill; the date, sum, for whose account, to whom payable, and of whom the value; and without delay, by the first post.

3d, He that remits, ought to be equally as circumspect as the drawer; and in case a first and second bill should both come to hand, at one time, he ought to send them by different posts, that in case one miscarry, the other may be secured and sent by the right person, to demand acceptance and payment.

4th, It is the duty of an acceptant to answer the drawer if he will accept his draught, or not, according to the letter of advice; for if he makes any difficulty about accepting, the
Q drawer

drawer should have speedy notice thereof, that he may find means to prevent the bill being returned with protest.

5th, If no punctual advice can be given whether a bill will be accepted or not, because the acceptor is abroad or cannot be found, the possessor should give advice thereof to the remitter, and to him for whose account it was drawn.

6th, When a bill is discharged and satisfied, for whose account soever it be, it is the duty of the payer and receiver, each of them, to advise those that are concerned therein respectively, except the draught, or remittance, be for the account of the acceptor, or the remitter; then it is not usual, though very convenient it would be, to give advice thereof.

CHAP. XXIV.

Of Inland BILLS of EXCHANGE.

WHEREAS by an act made in the ninth year of king William the third, entitled, "*An act for the better payment of inland bills of exchange,*" it is, among other things, enacted, that from and after presentation and acceptance of the said bill, or bills of exchange, (which acceptance shall be by the underwriting the same under the party's hand, so accepting,) and after the expiration of three days, after the said bill or bills shall become due, the party, to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the same bill or bills to be protested, in manner as in the said act it is enacted.

And whereas there is no provision made therein for protesting such bill or bills, in case the party on whom the same are, or shall be drawn, refuse to accept the same, by underwriting the same, under his hand, all merchants and others do refuse to underwrite such bill or bills, or make any other than a promissary acceptance, by which the effect and

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good

good intend of the said act, in that behalf, is wholly evaded, and no bill or bills can be protested before, or for want of such an acceptance by underwriting the same, as aforesaid: for remedy whereof, be it enacted by the authority aforesaid, that from and after the first day of May, 1705, in case, upon presenting any such bill or bills of exchange, the party or parties on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same, as aforesaid, the party to whom the said bill or bills are made payable to, his or her servant, agent, or assignee, may, and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange; any thing in the said, or any other law, to the contrary, notwithstanding; for which protest there shall be paid two shillings, and no more.

Provided always, that from and after the first day of May, no acceptance, of any such inland bills of exchange, shall be sufficient to charge any person whatsoever, unless the same be underwritten, or endorsed in writing thereupon. And if such bill be not accepted by such underwriting, or endorsement in writing, no drawer, of any such inland bill, shall be liable to pay any costs, damages, or interest thereupon, unless such protest shall be made for non-acceptance thereof; and within four-

teen

teen days after such protest, the same may be sent, or otherwise notice thereof be given to the party from whom such bill was received, or left in writing, at the place of his, or her usual abode; and if such a bill be accepted, and not paid before the expiration of three days after the said bill shall become due, and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given in manner and form above-mentioned; nevertheless, every drawer of such bill shall be liable to make payment of costs, damages, and interest, upon such inland bill, if any one protest shall be made for non-acceptance, or non-payment thereof, and notice thereof be sent, given, or left, as aforesaid.

Provided, That no such protest shall be necessary, either for non-acceptance, or non-payment, of any inland bill of exchange, unless the value be acknowledged, and expressed in such bill to be received, and unless such bill shall be drawn for twenty pounds sterling, or upwards. And that the protest hereby required for non-acceptance, shall be made by such persons as are appointed by the said re-
vited act, to protest inland bills of exchange or non-payment thereof.

And

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And be it further enacted, That from and after the said first day of May, if any person doth accept any such bill of exchange for, and in satisfaction of any former debt, or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person, accepting any such bill for his debt, doth take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and make protest as aforesaid, either for non-acceptance, or non-payment thereof.

Provided, That nothing herein contained shall extend to discharge any remedy that any person may have against the drawer, acceptor, or endorser of such bill.

N. B. In the sixth year of queen Anne's reign, the aforesaid act was made perpetual.

CHAP. XXV.

*A Variety of CASES determined by Lord
Mansfield, and others.*

CASE I.

THE plaintiff declared, upon the custom
of merchants, against the defendants, as
accepters of a bill of exchange; and the in-
strument run in these words:

Messrs. Gilly and Co.

Pray pay to Mr. Richard Banbury, one
month after date, two hundred pounds, on
account of freight of the *Veale Galley*, Edward
Champion, and this order shall be your suf-
ficient discharge for the same;

J. Gibson.

Accepted for Lisset and Gilly, of Leghorne,
to pay as remitted from thence, at *usance*.

March 18, 1748, H. Gilly.

Two objections were made by the defendants; *first*, That this was not a bill of exchange; for it is not payable to order, so as to be negotiable. It is not said to be for value received; and it is only an order upon a particular fund; like the case of *Jenney v. Horle*, (*page 22*) and several merchants, proved that they did not look upon it to be a bill of exchange; and others were of a contrary opinion.

The *chief justice* ruled it not to be a bill of exchange. He said it was not in the power of the parties to make what form they please pass for such a bill; it ought to be agreeable to the *Lex Mercatoria*. The privilege arises from the convenience to trade, which is not consulted in this case; and he thought it bad upon the objection of the fund out of which it was to be paid. However, being a mercantile transaction, he left it to the special jury of merchants; who found it to be no bill of exchange, on the objection for want of value received.

The *second* objection was, that the plaintiff, supposing it a bill of exchange, had not shewn there was any remittance to the defendants; and that this was not an absolute acceptance, but only conditional: and so the *chief justice* declared he understood it, and left it

it to the jury : but they, finding for the defendants upon the first point, gave no opinion as to this.

CASE II.

PAY to me, or my order, so much, is a bill of exchange, if accepted ; and this is the way to make a bill of exchange without the intervention of a third person. *Cunningham on bills of exchange.*

CASE III.

UPON a bill of exchange, against the acceptor, and it was objected, that the plaintiff should not be admitted to prove the acceptance, until he had proved the hand of the drawer ; and a difference was taken between this case and the case of an action against the endorser, who is liable though the bill be not signed by the person who is supposed to draw it ; because, an endorser is in the nature of a new drawer ; whereas, an acceptor is not liable, unless the bill was fairly signed by the drawer. But as to this the *chief justice* was of opinion, that the proof of an acceptance was a sufficient acknowledgement on the part of the acceptor, who must be supposed to know the hand of his own correspondent ; but he

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said it would not be conclusive evidence ; and therefore, if the defendant could shew the contrary, the reading the bill on behalf of the plaintiff should not preclude him. Whereupon the bill was read, and the question came upon the validity of the acceptance ; as to which, the case was this :

The bill was drawn from New England, for a sum of money advanced there to fit out a ship that had put in there, after having been taken by pirates. The bill was drawn upon the defendant, who was the freighter ; and he living at Whitehaven, the plaintiff applied to a merchant in London, who was his correspondent, to get him to send this bill, and another of one hundred and fifty pounds, drawn by the same person, and on the same account. He sent both bills, enclosed, to the defendant ; who, by letter, acknowledged the receipt of them, and writes thus : “ The
 “ two bills of exchange, which you sent me,
 “ I will pay them, in case the owners of the
 “ Queen Anne do not ; and they living in
 “ Dublin, must first apply to them : I hope
 “ to have their answer in a week or ten days.
 “ I do not expect they will pay them, but I
 “ judge it proper to take their answer before
 “ I do ; which I request you will acquaint
 “ Mr. Wilkinson with, and that he may rest
 “ satisfied of the payment.” In another letter

ter he writes, " I have not had an opportunity of sending the bills, you sent me, to the owners of the Queen Anne, to Ireland ; but will take the first opportunity, and then shall remit to the gentlemen concerned, according to my promise."

The defendant, upon this, paid the one hundred and fifty pound bill ; but, in this action, insisted that it did not amount to an acceptance, being only conditional, to pay it in case the owners of the Queen Anne did not ; and his promise to procure it from them, was in favour of the plaintiff. But the *chief justice* was of opinion, that it was rather in favour of himself ; and he having undertaken to write to them, it was not incumbent on the plaintiff to shew any application to them ; and as to the acceptance, it was, in *his* opinion, a very strong one. The bill was presented to the defendant ; he says, This is a good bill, and I will pay it ; you need not protest it, for it shall be paid : I only desire, that, for my convenience, you would stay till I can write to the owners in Ireland, who I do not expect will do any thing in it : this will be of service to me ; and as to you, you shall be secured ; for I promise, you shall have the money at all events. The bill being payable thirty days after sight, the jury gave interest for thirty

days after the date of the first letters, which acknowledged the receipt of the bill. ----
Cunningham on bills of exchange.

C A S E IV.

TH E defendant accepted a bill of exchange, to pay it when the goods consigned to him, and for which the bill was drawn, were sold: and the plaintiff declared, upon the custom of merchants, (after a verdict for the plaintiff, it was moved in arrest of judgment) That this acceptance, depending on the contingency of the sale of the goods, was not within the custom of merchants, or negotiable. But the court, upon consideration, held it good: for though the plaintiff might have refused to take such an acceptance, and have protested the bill; yet no body can say he might not submit to it. And it will effect trade, if factors are not allowed to use this caution, when bills are drawn before they have an opportunity to dispose of the goods. A man who is drawn upon to pay at ten days sight, may accept for thirty, though the other might protest the bill. --
Cunningham on bills of exchange.

C A S E V.

IT is held that an acceptance may be qualified, as thus, I accept this bill, half to be

be paid in money, and half in bills ; and this is good by the custom of merchants ; for he who may refuse the bill totally, may accept it in part ; but he, to whom the bill is due, may refuse such acceptance, and protest it so as to charge the drawer. Also it is said, that, after such acceptance, and refusal of payment, he hath the same liberty of charging the drawer, that he had in case the bill had been accepted absolutely, and payment refused.—
Cunningham on bills of exchange.

CASE VI.

THE plaintiff was endorsee of a bill of exchange, drawn from Scotland, upon the defendant, in these words, “ At thirty days sight, pay to J. S. or order, two hundred pounds, value received of him, and place the same to account of the York - Buildings company, per advice, from Charles Mildmay. To Mr. Humphry Bishop, Cashier of the York-Buildings company, at their house in Winchester-street, London. Accepted 13th of June, 1732, per H. Bishop.” This bill not being paid, an action was brought against the defendant upon his acceptance ; and the defendant proved that the letter of advice was addressed to the company ; and that the bill, being brought to their house, he was ordered

to accept it ; which he did, in the same manner as he had accepted other bills. But Mr. Justice Page, who tried the cause, directed the jury to find for the plaintiff, which they did accordingly.

And now, upon a motion for a new trial, the court held that the direction was right ; for the bill, upon the face of it, imports to be drawn upon the defendant, and it is accepted by him generally, and not as servant to the company, to whose account he had no right to charge it, till actual payment by himself. And this being an action by an endorsee, it would be of dangerous consequence to trade, to admit of evidence arising from such extrinsic circumstances, as the letter of advice. And they said, this differed widely from the case of a bill addressed to the master, and under-wrote by the servant ; where, undoubtedly, the servant would not be liable, but his acceptance would be considered as the act of the master. A bill of exchange, is a contract, by the custom of merchants ; and the whole, of that contract, must appear in writing. Now here is nothing in writing to bind the company, nor can any action be maintained against them upon the bill ; for the addition of cashier, to the defendant's name, is only to denote the person with more certainty, and the York-Buildings house is
only

only to inform the order where the drawer is to be found; and the direction, whose account to place it to, is for the use of the drawer only; and they compared it to the case of Carth. 5. 2 Ven. 307, where a bill was drawn payable to Price, for the use of Calvert, and held that the legal property was in Price, which is stronger than the present case. They said it might be otherwise, if the action had been by J. S. who was privy to the transaction, and it had appeared he tendered the bill, as a bill, on the company. But this plaintiff being a stranger, they could not consider those circumstances. The plaintiff had judgment. *Cunningham on bills of exchange.*

CASE VII.

A BILL drawn at six days sight, and presented and accepted the 8th of February, which made it payable the 14th, and the three days of grace brought it to the 17th, which was Saturday, and the acceptor stopt payment on the Tuesday following, before which the bill was not tendered; and, upon this evidence, it was left to the jury, who were of opinion that the drawer was discharged at the end of the three days of grace. *Cunningham on bills of exchange.*

CASE

C A S E VIII.

IN an action upon an inland bill of exchange, brought by the endorsee, against the drawer, it appeared the bill was payable the 14th of May; that, upon promise of payment, the endorsee gave the acceptor to the 18th, from thence to the 20th, thence to the 24th, and from thence to the 7th of June, when the acceptor failed; and there being no notice to the drawer, the *chief justice* held it to be the loss of the endorsee. *Cunningham on bills of exchange.*

C A S E IX.

TR E B Y, chief justice, held, that if a bill be payable ten days after sight, the day of sight cannot be accounted one of the ten days, but shall be excluded. First, Because it may be seen the last minute of the day, and that may be intended as reasonable, as that it was seen the first minute. Secondly, The party may have the whole day to view the bill, and that is allowed him by law. Thirdly, Because the contrary construction seems absurd; for then if a bill be payable one day after sight, it must be paid the same day that it is seen, which is not the day after the sight, as the bill requires. *Cunningham on bills of exchange.*

C A S E

CASE X.

A BILL of exchange was accepted by the drawer, by underwriting his name; but the person, to whom it became payable by endorsement, lost or mislaid it; and the drawer refusing payment, the endorsee exhibited his bill in *chancery*, setting forth the refusal, and that he offered to give security to the defendant to indemnify him, and annexed an affidavit to the bill of the losing or mislaying it. This being confessed by the answer, it was objected that it did not appear, by the plaintiff's affidavit, that he had not assigned the bill to another; but decreed that the defendant should pay the money, the plaintiff giving security to indemnify the defendant, as the master shall think reasonable, against any person that may hereafter demand the same. *Cunningham on bills of exchange.*

CASE XI.

ACTION on a bill of exchange, being by an executor, and upon a debt laid to be due to the testator; he held it necessary to prove the acceptance was in the testator's time. *Cunningham on bills of exchange.*

C A S E XII.

PLAINTIFF had a bill of exchange drawn on the defendant, which he endorsed and delivered to J. S. who went to the defendant to get it accepted. J. S. left it with him, and it was afterwards lost; thereupon the plaintiff brought trover. The court were all of opinion, that the bare endorsement, without any other words purporting an assignment, does not make an alteration of the property; for it may still be filled up, either with a receipt or assignment, and consequently J. S. is a good witness. *Cunningham on bills of exchange.*

C A S E XIII.

SINCE the statute, 3 and 4 Anne, it hath been adjudged, that an endorsee, of an inland bill of exchange, may maintain an action against the acceptor, on a *parole acceptance*, as to the principal sum, though not as to interest and costs; for the act being made to give a further remedy for interest, damages, and costs against the drawer, cannot be supposed to take any advantage from the payee which he had before; and therefore the true construction of the act is, that to charge the
drawer

drawer with interest and costs, the drawer must refuse to accept it in writing: nevertheless, if he accepts the bill by parole, he is liable to the principal sum in the bill, as he would have been before the act. *Cunningham on bills of exchange.*

CASE XIV.

THE defendant had a note of sixty pounds of one Bellamy, a goldsmith, payable to him, or bearer, at a day *then* to come; about a week before which he discounted it at the bank, without endorsing the bill. Bellamy, about two months after, broke, without having paid the bill; upon which the bank brought assumpsit for money lent, and, upon this evidence obtained a verdict; but the court granted a new trial, holding it to be a verdict against law: for if the owner of a bill, payable to bearer, deliver it for ready money, paid down for the same, and not for money antecedently due, or for money lent on the same bill, this is selling of the bill, like selling of *tallies*, &c. but if there be an endorsement thereon, the endorsee may have remedy on that endorsement, provided he demand the money in a convenient time. *Bank of England V. Newman p. 11 W. 3. Salk, MSS. 1 Raym. 442 S. C. Buller's Nisi Prius, 277.*

CASE XV.

Action of Trover lies not for a Bank Note.

AN *action of trover* was brought against the defendant, upon a bank note, for the payment of twenty one pounds ten shillings, to one William Fenny, or bearer, on demand. The cause was tried before lord Mansfield, at the sittings at Guildhall, London; and, upon the trial, it appeared, that William Fenny, being possessed of this bank note, on the 11th of December, 1756, sent it by the general post, under cover, directed to a person at Chipping Norton, in Oxfordshire; that, on the same night, the mail was robbed, and the bank note, in question, amongst other notes, taken and carried away by the robber. That this bank note, on the 12th of the same December, came into the hands and possession of the plaintiff, for a full and valuable consideration, and in the usual course and way of his business, and without any notice or knowledge of this bank note being taken out of the mail,

It was admitted and agreed, that, in the common and known course of trade, bank
notes

notes are paid by, and received of the holder, or possessor of them, as cash; and that, in the usual way of negotiating bank notes, they pass from one person to another as cash, by delivery only, and without any farther inquiry, or evidence of title, than what arises from the possession. It appeared, that Mr. Fenny, having notice of this robbery, on the 13th of December, applied, to the bank of England, to stop the payment of this note; which was ordered accordingly, upon Mr. Fenny's entering proper security to indemnify the bank.

Some little time after this, the plaintiff applied to the bank for the payment of this note; and, for that purpose, delivered the note to the defendant, who is clerk in the bank; but the defendant refused either to pay the note, or to deliver it to the plaintiff. Upon which, this action was brought against the defendant.

The jury found a verdict for the plaintiff, and the sum of twenty one pounds ten shillings damages; subject, nevertheless, to the opinion of this court, upon this question, *viz.* Whether, under the circumstances of this case, the plaintiff had a sufficient property, in this bank note, to entitle him to recover in the present action?

After

After many learned arguments between the counsel, on both sides, lord Mansfield delivered the resolution of the court. After stating the case, at large, he declared, that at the trial, he had no sort of doubt but that this action was well brought, and would lie against the defendant in the present case; upon the general course of business, and from the consequences of trade and commerce, which would be much incommoded by a contrary determination. This case has been very ingeniously argued by the counsel for the defendant. But the whole fallacy of the argument turns, upon comparing bank notes to what they do not resemble, and what they ought not to be compared to, *viz.* to goods, or to securities, or documents for debts. They are not goods, nor securities, nor documents for debts, nor are so esteemed: but are considered as money, as cash, in the ordinary course and transaction of business, by the general consent of mankind; which gives them the credit and currency of money, to all intents and purposes. They are as much money as guineas themselves are; or any other current coin, that is used in common payments as money or cash. They pass by a *will*, which bequeaths all the testator's money or cash, and are never considered as securities for money, but as money itself. In a suit, in the *court of chancery*, in 1748, upon

upon lord Aylebury's will, nine hundred pounds, in bank notes, was considered as cash. On payment of them, wherever a receipt is required, the receipts are always given as for money; not as for securities or notes. So, on bankruptcies, they cannot be followed as identical and distinguishable from money; but are always considered as money or cash.

CASE XVI.

THERE was a case, in the *court of chancery*, in December, 1749, on some of Mr. Child's notes, payable to the person to whom they were given, or bearer. The notes had been lost, or destroyed, many years. Mr. Child was willing to pay them to the widow, and administratrix of the person to whom they were made payable, upon their giving bond, with two responsible sureties, as is the custom in such cases, to indemnify him against the bearer, if the notes should ever be demanded. The administratrix brought a bill, which was dismissed, because she either could not, or would not, give the security required. No dispute ought to be made with the bearer of a cash note, in regard to commerce, and for the sake of the credit of these notes, though it is both reasonable and customary

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tomary to stay the payment till inquiry can be made whether the bearer of the note came by it fairly or not.

The whole court were unanimous, and ordered the *postea* to be delivered to the plaintiff.

C A S E X V I I .

Heylin, and others, against Adamson.

THIS was an action on the case upon promises ; and the first count in the declaration was upon an inland bill of exchange, drawn by Robert Carrick, and directed to William Dods, dated the 13th of March, 1756 : whereby, the said Robert Carrick, required the plaintiff, William Dods, to pay to the defendant, or his order, one hundred pounds, at forty days after date, value received, as advised, by the said Robert Carrick ; which said bill was endorsed by the said defendant, Eleanor Adamson, to the said plaintiffs, and was accepted by the said Dods, but not paid by him.

The plaintiffs, in support of their action, proved, that the said Robert Carrick made
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the bill, that the defendant endorsed it to the plaintiffs, and that the said William Dods accepted it, but afterwards refused payment; and that the plaintiffs thereupon, on the day it became payable, carried it to be protested for the non-payment; and, soon afterwards, brought their action thereon, against the defendant; but it did not appear, on the trial, that the drawer of the bill had any notice of such non-payment, or that any demand of the money was ever made on him, before the commencement of the suit.

It was therefore objected by the defendant's counsel, that the action would not lie against the defendant (the endorser) until a demand of payment had been made upon the drawer; and, as no such demand was proved to have been made on the drawer, the plaintiffs ought therefore to be non-suited.

Lord Mansfield directed a verdict to be given, at the trial, at the *sittings* at Guildhall, upon the said first count, for the plaintiffs, for one hundred pounds damages, and forty shillings costs, subject to the opinion of the court of king's bench, whether, upon this case, the plaintiffs were entitled to recover? The only question was, whether, in an action brought upon an inland bill of exchange, by the endorsee, against an endorser, (this ob-

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jection, *that no evidence was given, at the trial, of notice to the drawer of the bill, or even of making inquiry after him,*) was a ground of non-suit?

Lord Mansfield now delivered the resolution of the court. A bill of exchange is an order, or command, to the drawee, who has, or is supposed to have effects of the drawer's in his hands to pay; when the drawee has accepted, he is the original debtor, and due diligence must be used in applying to him. The drawer is only liable in default of payment by him, due diligence having been used; and therefore, if the acceptor is not called upon, within a reasonable time after the bill is payable, and happens to break, the drawer is not liable at all. Every man, therefore, who takes a bill of exchange, must know where to call upon the drawee, and undertakes to demand the money of him.

When that bill of exchange is endorsed, by the person to whom it was made payable, as between the endorser and endorsee, it is a new bill of exchange, and the endorser stands in the place of the drawer, and the endorsee undertakes to demand the money of the drawee; if he neglects, and the drawee becomes insolvent, the loss falls upon himself. If the endorsee is diligent, and the
drawee

drawee refuses payment, his immediate remedy is against the endorser. It was very properly observed, that the act, of the 9th and 10th of William the third, requires that the protest shall be notified to the party from whom the bill was received. He may have another remedy against the first drawer. The first drawer, as assignee to, and standing in the place of the endorser. The endorsee does not trust to the credit of the original drawer; he does not know whether such a person exists; or, where he lives; or, whether his name may have been forged. The endorser is his drawer, and the person to whom he originally trusted, in case the drawee should not pay the money. There is no difference, in this respect, between foreign and inland bills of exchange, except as to the degree of inconvenience; all the arguments from law, and the nature of the transaction, are exactly the same in both cases.

As to foreign bills of exchange, the question was solemnly determined by this court, upon very satisfactory grounds, in the case of Bromley against Frazier. (1 Strang. 441.) There was an action, upon the case, upon a foreign bill of exchange, by the endorsee, against the endorser; and, on a general demurrer, it was objected, "that they had not shewn a demand upon the drawer, in whose

default only it is that the endorser warrants;” and because this was a point unsettled, and on which there are contradictory opinions in, (Salk 131 and 133,) the court took time to consider of it; and, on the second argument, they delivered their opinions, that the declaration was well enough. For the design of the law of merchants, in distinguishing these from all other contracts, by making them assignable, was for the convenience of commerce, that they might pass from hand to hand, in the way of trade, in the same manner as if they was specie.

Now to require a demand upon the drawer, will be laying such a clog upon these bills, as will deter every body from taking them. The drawer lives abroad, perhaps in the Indies, where the endorsee has no correspondent to whom he can send the bill for a demand; or, if he could, yet the delay would be so great, that nobody would meddle with them. Suppose it was the case of several endorsements, must the last endorsee travel round the world before he can fix his action upon the man from whom he received the bill? In common experience every body knows that the more endorsements a bill has, the greater credit it bears. Whereas, if those demands were *all* necessary to be made, it must naturally diminish the value, by how much the
more

more difficult it renders the calling in the money. And as to the notion that has prevailed that the endorser warrants only in default of the drawer, there is no colour for it; for every endorser is in the nature of a new drawer: and, at Nisi Prius, the endorsee is never put to prove the hand of the first drawer, where the action is against an endorser. The requiring a protest for non-acceptance, is not because a protest amounts to a demand; for it is no more than giving notice, to the drawer, to get his effects out of the hands of the drawee; who, by others drawing, is supposed to have sufficient wherewithal to satisfy the bill. Upon the whole, they declared themselves to be of opinion "that, in case of a foreign bill of exchange, a demand upon the drawer is not necessary to make a charge upon the endorser, but the endorsee has his liberty to resort to either for the money; consequently the plaintiff, they said, must have judgment." Every inconvenience, here suggested, holds to a great degree; and every other argument holds equally, in the case of inland bills of exchange: we are, therefore, all of opinion "that to entitle the endorsee, of an inland bill of exchange, to bring an action against the endorser, upon failure of payment by the drawee, it is not necessary to make any demand of, or inquiry after the first drawer."

After

After which, lord Mansfield delivered in his opinion of the law respecting *promissory notes*, in the following manner.

The law is exactly the same, and fully settled upon the analogy of promissory notes to bills of exchange ; which is very clear, when the point of resemblance is once fixed.

While a promissory note continues in its original shape, of a promise from one man to pay to another, it bears no similitude to a bill of exchange. When it is endorsed the resemblance begins ; for then it is an order, by the endorser, upon the maker of the note, (his debtor, by the note,) to pay to the endorsee. This is the very definition of a bill of exchange.

The endorser is the drawer ; the maker of the note is the acceptor ; and the endorsee is the person to whom it is made payable. The endorser only undertakes in case the maker of the note does not pay ; the endorsee is bound to apply to the maker of the note ; he takes it upon that condition : and therefore must, in all cases, know who he is, and where he lives. And if, after the note becomes payable, he is guilty of a neglect, and the maker becomes insolvent, he loses the money, and cannot come upon the endorser at all.

all. Therefore, before the endorsee, of a promissory note, brings an action against the endorser, he must shew a demand, or due diligence, to get the money from the maker of the note. Just as the person, to whom the bill of exchange is made payable, must shew due diligence to get the money from the acceptor, before he brings an action against the drawer. So that the rule is exactly the same upon promissory notes, as it is upon bills of exchange; and the confusion has, in part, arisen from the maker, of a promissory note, being called the drawer: whereas, by comparison to bills of exchange, the endorser is the drawer.

Lord Mansfield thus concludes the case: "We are all of opinion, that, in actions upon inland bills of exchange, by an endorsee, against an endorser, the plaintiff must prove a demand of, or due diligence to get the money from the drawee or acceptor, but need not prove any demand of the drawer. And that, in actions upon promissory notes, by an endorsee, against the endorser, the plaintiff must prove a demand, or due diligence to get the money from the maker of the note." Accordingly the rule was, that the *postea** be delivered the plaintiff.

* *Postea*, (in law) a certificate of the proceedings upon a trial by *Nisi Prius*.

CASE XVIII.

AT Westminster, before lord Mansfield, a cause was tried, - - - - - Barry, esq. plaintiff, and a lady defendant; for recovery of a sum of money paid by the plaintiff, on his acceptance of a bill of exchange, drawn on him by the defendant, payable three months after date: which bill, the plaintiff alledged, he attested at the request of, and to accommodate the defendant. The defendant said, the plaintiff had value for his acceptance. Lord Mansfield observed that an acceptor, of a bill of exchange, acknowledged having effects of the drawer, by acceptance; and the plaintiff having no proof to support what he alledged but the bill, the defendant did not call a single witness.

The jury brought in a verdict for the defendant.

CASE XIX.

ON Saturday the 14th of December, 1776, a trial came on before lord Mansfield, at Guildhall;

Guildhall ; which, as it involved a very important question, to the commercial world, in the course of evidence, a display of the circumstances must be agreeable to the reader.

The action was brought to recover the amount of a bank post bill for twenty pounds, which was sent from Messrs. Walpole and Co. bankers, to the plaintiff's seat in the country ; and which, after it had reached his hands, was stolen or lost, and received by the defendant, who had given for it a consideration, *bona fide*, unendorsed. The defendant could not ascertain, in a multiplicity of money transactions, from whom he received the bill. The only question therefore was " Whether the plaintiff or defendant should bear the loss ? " The former could not prove the manner in which the bill went out of his possession. This gave rise to a suggestion hinted at by the counsel for the defendant, that the plaintiff was attempting a recovery, of the sum, a second time. But lord Mansfield said, that, under the present circumstances, the general rule should be pursued, that of examining the plaintiff upon oath : if it turned out he had never negotiated the bill, there could be no doubt of the defendant's being answerable for his own negligence, in receiving the bill without an endorsement, which only could alienate the property from the plaintiff. That

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in a case, where an action was brought before the noble *speaker*, to recover the amount of a draught paid by a banker, and drawn the day before the date imported, by mistake, he had held the banker liable ; because, he should have examined the note more strictly, which would have prevented the payment.

Upon the evidence of the plaintiff, the jury found a verdict for the full amount of the sum sued for.

The decision of the case, aforesaid, proves the absolute necessity of endorsing bank post bills payable to order.

CASE XX.

ON Saturday, March the 7th, 1778, was tried before lord Mansfield, at Guildhall, London, a cause, which involved in it a question that, the noble judge observed, was of the highest import to commerce. The action was brought by a tradesman, near the Mansion-house, against a merchant at Aberdeen, to recover the amount of some goods. The defendant insisted, that, together with the money paid into court, and what had been otherwise

otherwise received by a bill for thirty eight pounds, the whole of the demand was fully satisfied. The plaintiff denied that the bill was ever meant to be received at his own risk; he took it only to endeavour, as an act of friendship, to procure the money upon it of the acceptor; but it turned out, in proof, that a receipt was given for this bill, by the plaintiff, without any exception: and that the defendant said, at the time, that though the drawer was insolvent, he believed the acceptor to be a very good man. However, the traverse appeared, and the bill was dishonoured. The banker kept it three days after it became due, which was the 10th of July; and, on the 21st. the plaintiff wrote to the defendant, and not before. The question was, "whether this should be held sufficient notice?" The noble *lord* on the bench, pointed out this material doctrine as a rule in paper circulation. He said, the law required that reasonable notice should be given, in all such cases; that otherwise, the inconvenience would be terrible to traders; for to-day, that might be got, which to-morrow, might be irrecoverable. That three days was the extent of time allowed to be recoverable; afterwards, the *holder* of the bill, must look to it as his own. The plaintiff, in this cause, had neglected to write to the defendant for thirteen days after the bill was due, which

was ten days too late. A verdict was, therefore, given to the defendant.

C A S E X X I.

Statute, 17th of GEORGE the third.

WHEREAS, by a certain act of parliament, passed in the fifteenth year of the reign of his present majesty, all negotiable, promissory, or other notes, bills of exchange, or draughts, or undertakings in writing, for any sum of money less then twenty shillings in the whole, and issued after the twenty fourth day of June, 1775, were made void ; and the publishing, or uttering, and negotiating of any such notes, bills, draughts, or undertakings, for a less sum than twenty shillings, or on which less than that sum should be due, was, by the said act, restrained, under certain penalties or forfeitures, therein mentioned. And all such notes, bills of exchange, draughts, &c. issued before the said twenty fourth day of June, were made payable on demand, and were directed to be recovered in such manner as is therein also mentioned.

And

And whereas, the said act hath been attended with very salutary effects ; and in case the provision, therein contained, was extended to a further sum, (but yet without prejudice to the convenience arising to the public from the negotiation of promissory notes, bills, &c. for the remittance of money, in discharge of any balance of any account, or other debt,) the good purposes of the said act would be further advanced. Be it therefore enacted, that all promissory, or other notes, bills of exchange, or draughts, or undertakings in writing, being negotiable, or transferable, for the payment of twenty shillings, or any sum of money above that sum, and less than five pounds ; or, on which twenty shillings, or above that sum, and less than five pounds, shall remain undischarged, and which shall be issued within that part of Great-Britain called England, at any time after the first day of January, 1778, shall specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable ; and shall bear date before, or at the time of drawing or issuing thereof, and not on any day subsequent thereto ; and shall be made payable within the space of twenty one days next after the day of the date thereof ; and shall not be transferable, or negotiable, after the time therein limited for payment thereof.

And

And that every endorsement, to be made thereon, shall be made before the expiration of that time, and to bear date at, or not before the time of making thereof; and shall specify the name, and place of abode, of the person or persons to whom, or to whose order the money contained in every such note, bill, draught, or undertaking, is to be paid: and that the signing of every such note, bill, draught, or undertaking, and also of every such endorsement, shall be attested by one subscribing witness at least. Which said notes, bills of exchange, or draughts, or undertakings in writing, may be made or drawn, in words, to the purport or effect as set out in the *schedule* hereunto annexed. (No. I. and II.) And that all promissory, or other notes, bills of exchange, or draughts, or undertakings in writing, being negotiable, or transferable, for the payment of twenty shillings, or any sum of money above that sum, and less than five pounds, shall remain undischarged, and which shall be issued within that part of Great-Britain called England, at any time after the said first day of January, 1778, in any other manner than as aforesaid. And also every endorsement, on any such note, bill, draught, or undertaking, to be negotiated under this act, other than as aforesaid, shall, and the same are hereby declared to be absolutely void; any law, statute, usage,
or

or custom to the contrary thereof in any wise notwithstanding. And the publishing, uttering, or negotiating, within that part of Great-Britain called England, of any promissory, or other note, bill of exchange, draught, or undertaking in writing, being negotiable or transferable, for twenty shillings, or above that sum, and less than five pounds, shall remain undischarged, and issued, or made in any other manner than notes, draughts, or undertakings, hereby permitted to be published or negotiated as aforesaid; and also the negotiating of any such last mentioned notes, bills, draughts, or undertakings, after the time appointed for payment thereof, or before that time, in any other manner than as aforesaid, by any act, contrivance, or means whatsoever, from and after the first day of January, 1778, shall be, and the same is hereby declared to be prohibited, or restrained, under the like penalties or forfeitures, and to be recovered and applied in like manner as by the said act is directed, with respect to the uttering, or publishing, or negotiating of notes, bills of exchange, draughts, or undertakings in writing, for any sum of money not less than the sum of twenty shillings, or on which less than that sum shall be due.

And

And from and immediately after the passing of the said act, all promissory, or other notes, bills of exchange, draughts, or undertakings in writing, for the payment of any greater sum than twenty shillings, and less than five pounds, or on which twenty shillings, and less than the sum of five pounds shall remain undischarged, and being negotiable or transferable, as shall be issued before the said first day of January, 1778, shall be, and the same are hereby declared and adjudged payable, within that part of Great-Britain called England, *on demand*; any terms, restrictions, or conditions, therein contained, to the contrary thereof, notwithstanding; and shall be recoverable in such manner, or by the like means, as is, or are directed in, or by the said act, with respect to notes, bills of exchange, or draughts, or undertakings in writing, therein mentioned to have issued previous to the said twenty fourth day of June, 1775. And that all, and every other powers, provisos, limitations, restrictions, penalties, clauses, matters, and things whatsoever in the said former act contained, with respect thereto, and also with respect to all such notes, bills of exchange, draughts, or undertakings in writing, issued after the said twenty fourth day of June, 1775, shall be, and the same are hereby declared in force within that part of Great-Britain called
 England,

England, as to all notes, bills, draughts, or undertakings in writing, for twenty shillings, or any greater sum, and less than the sum of five pounds, or on which twenty shillings, or above that sum, and less than five pounds shall remain undischarged, issued after the said first day of January, 1778, and previous thereto respectively, and in like manner as if the same respectively had been the object of the said act, at the time of making thereof, save so far as the same, or any of them, are altered, or varied, by this present act.

It is further enacted by the authority aforesaid, that the said former, and also this present act, shall continue in force, not only for the residue of the term of five years in the said former act mentioned, and from to the end of the then next session of parliament, but also for the further term of five years, and from thence to the end of the then next session of parliament.

154 *The* MERCHANT, TRADESMAN,

SCHEDULE.

No. I.

York, March 25, 1778.

TWENTY-ONE days after date, I
promise to pay A. B. of London, or his
order, the sum of three pounds ten shillings,
for value received,

By C. D.

Witness

E. F.

And the ENDORSEMENT.

London, April 2, 1778.

PA Y the contents to G. H. of
Gainsbrough, or his order,

Witness

A. B.

J. K.

No. II.

No. II.

York, May 19, 1778.

TWENTY-ONE days after date, pay
to A. B. of London, or his order, the
sum of four pounds fifteen shillings, value
received, as advised,

By C. D.

To E. F. of Leeds.

Witness
G. H.

And the ENDORSEMENT.

London, June 1, 1778.

PA Y the contents to S. K. of
Nottingham, or his order,

Witness
L. M.

A. B.